

# HOUSE BILL No. 1453

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-5-1; IC 4-21.5-2-4; IC 4-22-2-37.1; IC 9-13-2; IC 9-16-1-1; IC 9-17; IC 9-18; IC 9-22; IC 9-23; IC 9-29; IC 9-31; IC 9-32; IC 23-19-6-1; IC 24-4-6-1; IC 34-30-2-30.

**Synopsis:** Dealer services division of the secretary of state. Establishes a dealer services division (division) within the office of the secretary of state and provides that the division administers and has jurisdiction over vehicle dealer (dealer) services (services). Provides that: (1) certain administrative procedures and orders are not applicable; and (2) certain procedures relating to administrative rules are applicable; to the division. Provides that a transfer dealer is not considered a dealer. Repeals and relocates language concerning vehicle dealer services. Provides that a person who violates statutes or rules pertaining to services or an order issued by the secretary of state pertaining to services is subject to a civil penalty of up to \$10,000 for each violation. Establishes the dealer enforcement account to be used to support the division. Provides for criminal penalties for certain violations pertaining to services. Establishes procedures: (1) for administration of the division; and (2) for review of actions by the division and for judicial action concerning the division. Provides that a dealer is a person who sells at least five vehicles each year or at least six boats or watercraft each year. (Current law provides that a dealer is a person who sells at least 12 vehicles a year for delivery in Indiana or at least six boats or watercraft trailers a year for delivery in Indiana.) Makes conforming amendments.

**Effective:** July 1, 2011.

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January 18, 2011, read first time and referred to Committee on Roads and Transportation.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

## HOUSE BILL No. 1453

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-5-1-11, AS AMENDED BY P.L.106-2008,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2011]: Sec. 11. The secretary of state may adopt and enforce  
4 rules under IC 4-22-2 that are necessary to carry out

5 ~~(1) IC 9-18-26;~~

6 ~~(2) IC 9-22-4;~~

7 ~~(3) IC 9-23-1;~~

8 ~~(4) IC 9-23-2;~~

9 ~~(5) IC 9-23-3; and~~

10 ~~(6) IC 9-23-6. IC 9-32.~~

11 SECTION 2. IC 4-5-1-12 IS ADDED TO THE INDIANA CODE  
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
13 1, 2011]: Sec. 12. (a) **The secretary of state shall establish a dealer  
14 services division within the office of the secretary of state. The  
15 dealer services division shall administer and has jurisdiction over  
16 IC 9-29-17 and IC 9-32.**

17 (b) **The secretary of state shall appoint a director of the dealer**



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1 **services division established by subsection (a).**

2 SECTION 3. IC 4-21.5-2-4, AS AMENDED BY P.L.219-2007,  
3 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2011]: Sec. 4. (a) This article does not apply to any of the  
5 following agencies:

- 6 (1) The governor.
- 7 (2) The state board of accounts.
- 8 (3) The state educational institutions.
- 9 (4) The department of workforce development.
- 10 (5) The unemployment insurance review board of the department
- 11 of workforce development.
- 12 (6) The worker's compensation board of Indiana.
- 13 (7) The military officers or boards.
- 14 (8) The Indiana utility regulatory commission.
- 15 (9) The department of state revenue (excluding an agency action
- 16 related to the licensure of private employment agencies).
- 17 (10) The department of local government finance.
- 18 (11) The Indiana board of tax review.

19 **(12) The dealer services division of the office of the secretary**  
20 **of state.**

21 (b) This article does not apply to action related to railroad rate and  
22 tariff regulation by the Indiana department of transportation.

23 SECTION 4. IC 4-22-2-37.1, AS AMENDED BY P.L.35-2010,  
24 SECTION 2, AND AS AMENDED BY P.L.113-2010, SECTION 9, IS  
25 CORRECTED AND AMENDED TO READ AS FOLLOWS  
26 [EFFECTIVE JULY 1, 2011]: Sec. 37.1. (a) This section applies to a  
27 rulemaking action resulting in any of the following rules:

- 28 (1) An order adopted by the commissioner of the Indiana
- 29 department of transportation under IC 9-20-1-3(d) or
- 30 IC 9-21-4-7(a) and designated by the commissioner as an
- 31 emergency rule.
- 32 (2) An action taken by the director of the department of natural
- 33 resources under IC 14-22-2-6(d) or IC 14-22-6-13.
- 34 (3) An emergency temporary standard adopted by the
- 35 occupational safety standards commission under
- 36 IC 22-8-1.1-16.1.
- 37 (4) An emergency rule adopted by the solid waste management
- 38 board under IC 13-22-2-3 and classifying a waste as hazardous.
- 39 (5) A rule, other than a rule described in subdivision (6), adopted
- 40 by the department of financial institutions under IC 24-4.5-6-107
- 41 and declared necessary to meet an emergency.
- 42 (6) A rule required under IC 24-4.5-1-106 that is adopted by the

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department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(9) A rule adopted under IC 16-19-3-5 or IC 16-41-2-1 that the executive board of the state department of health declares is necessary to meet an emergency.

(10) An emergency rule adopted by the Indiana finance authority under IC 8-21-12.

(11) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(12) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(13) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by or other date provided by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(14) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(15) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(16) An emergency rule adopted by the Indiana gaming commission under IC 4-32.2-3-3(b), IC 4-33-4-2, IC 4-33-4-3, IC 4-33-4-14, *IC 4-33-22-12*, or IC 4-35-4-2.

(17) An emergency rule adopted by the alcohol and tobacco commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(18) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(19) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(20) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(21) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-15-41-15.

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(22) An emergency rule adopted by the Indiana state board of animal health under IC 15-17-10-9.

(23) An emergency rule adopted by the board of directors of the Indiana education savings authority under IC 21-9-4-7.

(24) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-34 (repealed).

(25) An emergency rule adopted by the department of local government finance under IC 6-1.1-4-33 (repealed).

(26) An emergency rule adopted by the boiler and pressure vessel rules board under IC 22-13-2-8(c).

(27) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-37(l) (repealed) or an emergency rule adopted by the department of local government finance under IC 6-1.1-4-36(j) (repealed) or IC 6-1.1-22.5-20.

(28) An emergency rule adopted by the board of the Indiana economic development corporation under IC 5-28-5-8.

(29) A rule adopted by the department of financial institutions under IC 34-55-10-2.5.

(30) A rule adopted by the Indiana finance authority:

(A) under IC 8-15.5-7 approving user fees (as defined in IC 8-15.5-2-10) provided for in a public-private agreement under IC 8-15.5;

(B) under IC 8-15-2-17.2(a)(10):

(i) establishing enforcement procedures; and

(ii) making assessments for failure to pay required tolls;

(C) under IC 8-15-2-14(a)(3) authorizing the use of and establishing procedures for the implementation of the collection of user fees by electronic or other nonmanual means; or

(D) to make other changes to existing rules related to a toll road project to accommodate the provisions of a public-private agreement under IC 8-15.5.

(31) An emergency rule adopted by the board of the Indiana health informatics corporation under IC 5-31-5-8.

~~(32) An emergency rule adopted by the state athletic commission under IC 25-9-1-4.5.~~

~~(32) (33)~~ (32) An emergency rule adopted by the department of child services under IC 31-25-2-21, IC 31-27-2-4, IC 31-27-4-2, or IC 31-27-4-3.

~~(34)~~ (33) An emergency rule adopted by the Indiana real estate commission under IC 25-34.1-2-5(15).

~~(35)~~ (34) A rule adopted by the department of financial



*institutions under IC 24-4.4-1-101 and determined necessary to meet an emergency.*

**(35) An emergency rule adopted by the dealer services division of the office of the secretary of state under IC 9-32-2-1.**

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the format of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the publisher for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the format of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the publisher shall:

(1) accept the rule for filing; and

(2) electronically record the date and time that the rule is accepted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date and time that the rule is accepted for filing under subsection (e).

(3) The effective date stated by the adopting agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in subsections (j), (k), and (l), a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(13), (a)(24), (a)(25), or (a)(27), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. The extension period for a rule adopted under subsection (a)(28) may

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not exceed the period for which the original rule was in effect. A rule adopted under subsection (a)(13) may be extended for two (2) extension periods. Subject to subsection (j), a rule adopted under subsection (a)(24), (a)(25), or (a)(27) may be extended for an unlimited number of extension periods. Except for a rule adopted under subsection (a)(13), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

- (1) sections 24 through 36 of this chapter; or
- (2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(8), (a)(12), or (a)(29) expires on the earlier of the following dates:

- (1) The expiration date stated by the adopting agency in the rule.
- (2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

(j) A rule described in subsection (a)(24) or (a)(25) expires not later than January 1, 2006.

(k) A rule described in subsection (a)(28) expires on the expiration date stated by the board of the Indiana economic development corporation in the rule.

(l) A rule described in subsection (a)(30) expires on the expiration date stated by the Indiana finance authority in the rule.

(m) A rule described in subsection (a)(5) or (a)(6) expires on the date the department is next required to issue a rule under the statute authorizing or requiring the rule.

SECTION 5. IC 9-13-2-1.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.3. "Adjusted or net capitalized cost", for purposes of ~~IC 9-23-2.5~~, **IC 9-32**, has the meaning set forth in ~~IC 9-23-2.5-1~~. **IC 9-32-1-2.**

SECTION 6. IC 9-13-2-1.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1.6. "Advisory board", for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-3.**

SECTION 7. IC 9-13-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. "Automobile auctioneer", ~~means a person who is engaged in the business of, or as a part of the auctioneer's business participates in, providing a place of business or facilities for the purchase and sale of motor vehicles on the basis of bids by persons acting for themselves or others. The term does not include a person acting only as an auctioneer under IC 25-6.1-1-1,~~ **for**

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purposes of IC 9-32, has the meaning set forth in IC 9-32-1-4.

SECTION 8. IC 9-13-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. "Automotive salvage rebuilder", means a person, firm, limited liability company, corporation, or other legal entity engaged in the business:

(1) of acquiring salvage motor vehicles for the purpose of restoring, reconstructing, or rebuilding the vehicles; and

(2) in the resale of these vehicles for use on the highway. for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-5.

SECTION 9. IC 9-13-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. "Broker", for purposes of ~~IC 9-23-3~~, IC 9-32, has the meaning set forth in ~~IC 9-23-3-0.3~~. IC 9-32-1-6.

SECTION 10. IC 9-13-2-18.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 18.6. "Capitalized cost", for purposes of ~~IC 9-23-2.5~~, IC 9-32, has the meaning set forth in ~~IC 9-23-2.5-2~~. IC 9-32-1-7.

SECTION 11. IC 9-13-2-18.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 18.7. "Capitalized cost reduction", for purposes of ~~IC 9-23-2.5~~, IC 9-32, has the meaning set forth in ~~IC 9-23-2.5-3~~. IC 9-32-1-8.

SECTION 12. IC 9-13-2-42, AS AMENDED BY P.L.93-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 42. (a) "Dealer" means, except as otherwise provided in this section, a person who sells to the general public, including a person who sells directly by the Internet or other computer network, at least ~~twelve (12)~~ five (5) vehicles each year. ~~for delivery in Indiana.~~ The term includes a person who sells off-road vehicles. A dealer must have an established place of business that meets the minimum standards prescribed by the secretary of state under rules adopted under IC 4-22-2.

(b) The term does not include the following:

(1) A receiver, trustee, or other person appointed by or acting under the judgment or order of a court.

(2) A public officer while performing official duties.

~~(3) A person who is a dealer solely because of activities as a transfer dealer.~~

~~(4)~~ (3) An automotive mobility dealer.

(c) "Dealer", for purposes of IC 9-31, means a person that sells to the general public ~~for delivery in Indiana~~ at least six (6):

(1) boats; or

(2) trailers:

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(A) designed and used exclusively for the transportation of watercraft; and

(B) sold in general association with the sale of watercraft; per year.

**(d) "Dealer", for purposes of IC 9-32-3, has the meaning set forth in IC 9-32-3-1.**

SECTION 13. IC 9-13-2-43.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 43.3. "Director", for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-9.**

SECTION 14. IC 9-13-2-44 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 44. (a) "Disposal facility" means a person, firm, limited liability company, corporation, or other legal entity that, in the course of business, engages in the acquisition and dismantling or demolition of motor vehicles, motorcycles, semitrailers, or recreational vehicles or their remains for the benefit of reusable components and parts or recyclable materials.

(b) The term includes the following enterprises:

(1) An automotive salvage recycler.

(2) A hulk crusher.

~~(c) The term does not include~~ (3) A scrap metal processor.

SECTION 15. IC 9-13-2-45.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 45.5. "Division", for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-10.**

SECTION 16. IC 9-13-2-50 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 50. "Established place of business" means a permanent enclosed building or structure owned or leased for the purpose of ~~bartering~~, **offering for sale**, trading, and selling motor vehicles. The term does not include a residence, tent, temporary stand, or permanent quarters temporarily occupied.

SECTION 17. IC 9-13-2-51 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 51. "Existing franchise", ~~means the franchise in effect on the date of a franchisee's death or incapacity.~~ **for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-11.**

SECTION 18. IC 9-13-2-53 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 53. "Fair market value", for purposes of ~~IC 9-22-3~~, **IC 9-32**, has the meaning set forth in ~~IC 9-22-3-2~~. **IC 9-32-1-12.**

SECTION 19. IC 9-13-2-66.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2011]: **Sec. 66.5. "Flood damaged vehicle", for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-13.**

SECTION 20. IC 9-13-2-67 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 67. "Franchise", means an oral or a written agreement for a definite or an indefinite period in which a manufacturer or distributor grants to a dealer a right to use a trade name; trade or service mark; or related characteristic; and in which there is a community of interest in the marketing of motor vehicles or related services at retail or otherwise: **for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-14.**

SECTION 21. IC 9-13-2-68 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 68. "Franchisee", means a dealer to whom a franchise is ~~granted~~: **for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-15.**

SECTION 22. IC 9-13-2-69 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 69. "Franchisor", means a manufacturer or distributor who grants a franchise to a dealer: **for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-16.**

SECTION 23. IC 9-13-2-90 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 90. "Labor rate", means the hourly labor rate charged by a franchisee for service; filed periodically with the bureau as the bureau may require; and posted prominently in the franchisee's service department: **for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-17.**

SECTION 24. IC 9-13-2-92.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 92.5. "Lease agreement", for purposes of ~~IC 9-23-2.5~~; **IC 9-32, has the meaning set forth in ~~IC 9-23-2.5-4~~; IC 9-32-1-18.**

SECTION 25. IC 9-13-2-92.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 92.7. "Lease transaction", for purposes of ~~IC 9-23-2.5~~; **IC 9-32, has the meaning set forth in ~~IC 9-23-2.5-5~~; IC 9-32-1-19.**

SECTION 26. IC 9-13-2-98.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 98.5. "Material fact", for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-20.**

SECTION 27. IC 9-13-2-105, AS AMENDED BY P.L.9-2010, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 105. (a) "Motor vehicle" means, except as otherwise provided in this section, a vehicle that is self-propelled. The term does not include a farm tractor, an implement of agriculture designed to be operated primarily in a farm field or on farm premises,

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or an electric personal assistive mobility device.

(b) "Motor vehicle", for purposes of IC 9-21, means:

- (1) a vehicle except a motorized bicycle that is self-propelled; or
- (2) a vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Motor vehicle", for purposes of IC 9-19-10.5 and IC 9-25, means a vehicle that is self-propelled upon a highway in Indiana. The term does not include a farm tractor.

(d) "Motor vehicle", for purposes of IC 9-30-10, does not include a motorized bicycle.

(e) "Motor vehicle", for purposes of ~~IC 9-23-2 and IC 9-23-3~~, **IC 9-32-13**, includes a semitrailer.

(f) "Motor vehicle", for purposes of IC 9-24-6, has the meaning set forth in 49 CFR 383.5 as in effect July 1, 2010.

**(g) "Motor vehicle", for purposes of IC 9-32-8, has the meaning set forth in IC 9-32-8-1.**

SECTION 28. IC 9-13-2-114.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 114.5. "Offer to sell" means every attempt or offer to dispose of, or solicitation of an offer to purchase, a motor vehicle or interest in a motor vehicle for hire.**

SECTION 29. IC 9-13-2-149 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 149. "Rebuilt vehicle" means a vehicle for which a certificate of title has been issued by the bureau under ~~IC 9-22-3~~ **IC 9-32-8** or for which a certificate of title has been issued by another state or jurisdiction under a similar procedure for the retitling of salvage motor vehicles.

SECTION 30. IC 9-13-2-149.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 149.5. **(a) "Record", for purposes of IC 9-14-3.5, has the meaning set forth in IC 9-14-3.5-6.**

**(b) "Record", for purposes of IC 9-32-5-14, has the meaning set forth in IC 9-32-1-21.**

SECTION 31. IC 9-13-2-151.5, AS AMENDED BY P.L.37-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 151.5. "Relevant market area", for purposes of ~~IC 9-23-3~~, means the following:

- (1) With respect to a new motor vehicle dealer who plans to relocate the dealer's place of business in a county having a population of more than one hundred thousand (100,000); the area within a radius of six (6) miles of the intended site of the relocated dealer. The six (6) mile distance shall be determined by measuring the distance between the nearest surveyed boundary of

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the existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the relocated new motor vehicle dealer's place of business.

(2) With respect to a:

(A) proposed new motor vehicle dealer; or

(B) new motor vehicle dealer who plans to relocate the dealer's place of business in a county having a population that is not more than one hundred thousand (100,000);

the area within a radius of ten (10) miles of the intended site of the proposed or relocated dealer. The ten (10) mile distance shall be determined by measuring the distance between the nearest surveyed boundary line of the existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer's principal place of business.

**IC 9-32, has the meaning set forth in IC 9-32-1-22.**

SECTION 32. IC 9-13-2-154.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 154.5. "Retail lessee", for purposes of ~~IC 9-23-2.5~~; **IC 9-32**, has the meaning set forth in ~~IC 9-23-2.5-6~~; **IC 9-32-1-23**.

SECTION 33. IC 9-13-2-154.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 154.6. "Retail lessor", for purposes of ~~IC 9-23-2.5~~; **IC 9-32**, has the meaning set forth in ~~IC 9-23-2.5-7~~; **IC 9-32-1-24**.

SECTION 34. IC 9-13-2-159.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 159.5. "Sale", for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-25.**

SECTION 35. IC 9-13-2-162 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 162. "Scrap metal processor" means a private, commercial, or governmental enterprise **that engages in the acquisition of motor vehicles, motorcycles, semitrailers, or recreational vehicles or the remains of these vehicles and** having facilities for processing iron, steel, or nonferrous scrap and whose principal product is scrap iron, scrap steel, or nonferrous scrap for sale for remelting purposes. ~~A scrap metal processor is not a disposal facility or a used parts dealer.~~

SECTION 36. IC 9-13-2-162.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 162.5. "Secretary", for purposes of IC 9-32, has the meaning set forth in IC 9-32-1-26.**

SECTION 37. IC 9-13-2-185 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 185. "Transfer dealer",  
 2 means a person other than a dealer, manufacturer, or wholesale dealer  
 3 who has the necessity of transferring a minimum of twelve (12) motor  
 4 vehicles during a license year as part of the transfer dealer's primary  
 5 business function: **for purposes of IC 9-32, has the meaning set forth**  
 6 **in IC 9-32-1-27.**

7 SECTION 38. IC 9-13-2-191.5 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 191.5. "Uniform time  
 9 standards manual", for purposes of ~~IC 9-23-3~~, **IC 9-32**, has the  
 10 meaning set forth in ~~IC 9-23-3-0.5~~; **IC 9-32-1-28.**

11 SECTION 39. IC 9-13-2-195 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 195. "Used parts  
 13 dealer", means a person who primarily buys, sells, barter, exchanges,  
 14 or deals in used major component parts. The term does not include a  
 15 scrap metal processor: **for purposes of IC 9-32, has the meaning set**  
 16 **forth in IC 9-32-1-29.**

17 SECTION 40. IC 9-13-2-199 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 199. "Wholesale  
 19 dealer", means a person who is engaged in the business of buying or  
 20 selling motor vehicles for resale to other dealers, wholesale dealers,  
 21 transfer dealers, or persons other than the general public: **for purposes**  
 22 **of IC 9-32, has the meaning set forth in IC 9-32-1-30.**

23 SECTION 41. IC 9-16-1-1 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. As used in this  
 25 chapter, "qualified person" means any of the following:

26 (1) A motor club that is any of the following:

27 (A) A domestic corporation.

28 (B) A foreign corporation qualified to transact business in  
 29 Indiana under IC 23-1 or IC 23-17.

30 (2) A financial institution (as defined in IC 28-1-1-3).

31 (3) A new motor vehicle dealer licensed under ~~IC 9-23-2~~.  
 32 **IC 9-32-11.**

33 (4) Other persons, including persons licensed under ~~IC 9-23-2~~  
 34 **IC 9-32-11** that are not covered by subdivision (3), that the  
 35 commission determines can meet the standards adopted by the  
 36 commission under IC 9-15-2-1(7) and the requirements for partial  
 37 service contractors under section 4.5 of this chapter.

38 SECTION 42. IC 9-17-2-4 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. If a certificate of  
 40 title:

41 (1) has been previously issued for a vehicle in Indiana, an  
 42 application for a certificate of title must be accompanied by the

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1 previously issued certificate of title, unless otherwise provided; or  
 2 (2) has not previously been issued for a vehicle in Indiana, an  
 3 application for a certificate of title must be accompanied by a  
 4 manufacturer's certificate of origin as provided in ~~IC 9-17-8;~~  
 5 **IC 9-32-4-3** unless otherwise provided.

6 SECTION 43. IC 9-17-2-12.5, AS ADDED BY P.L.131-2008,  
 7 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2011]: Sec. 12.5. (a) Except as provided in subsection (d), the  
 9 bureau may accept an application for a certificate of title for a motor  
 10 vehicle that is titled in the name of a financial institution, a lending  
 11 institution, or an insurance company in Canada and imported by a  
 12 registered importer without requiring an inspection under ~~section 12(c)~~  
 13 ~~of this chapter~~ **IC 9-32-3-1(c)** if the registered importer presents the  
 14 bureau with the following documentation relating to the motor vehicle:

15 (1) A copy of the registered importer's validation agreement  
 16 issued by the United States Customs and Border Protection  
 17 (CBP).

18 (2) A copy of the entry summary issued by the United States  
 19 Customs and Border Protection (CBP Form 7501).

20 (3) A vehicle history report issued by an independent provider of  
 21 vehicle history information that includes:

22 (A) the vehicle's title information;

23 (B) the vehicle's odometer readings; and

24 (C) the number of owners of the vehicle.

25 (b) Except as provided in subsection (d), the bureau may accept an  
 26 application for a certificate of title for a motor vehicle that is titled in  
 27 another state and is in the lawful possession of a financial institution,  
 28 a lending institution, or an insurance company if the financial  
 29 institution, lending institution, or insurance company presents to the  
 30 bureau a vehicle history report issued by an independent provider of  
 31 vehicle history information that includes:

32 (1) the motor vehicle's title information;

33 (2) the motor vehicle's odometer readings; and

34 (3) the number of owners of the motor vehicle.

35 (c) A:

36 (1) registered importer; or

37 (2) financial institution, a lending institution, or an insurance  
 38 company;

39 must maintain a copy of all documentation required by this section for  
 40 at least ten (10) years.

41 (d) An inspection of a motor vehicle described in subsection (a) or  
 42 (b) is required under ~~section 12(c) of this chapter~~ **IC 9-32-3-1(c)** if:

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(1) the registered importer; or  
 (2) the financial institution, lending institution, or insurance company;  
 is unable to provide the bureau with the documentation required by this section.

SECTION 44. IC 9-17-3-7, AS AMENDED BY P.L.131-2008, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. ~~(a)~~ This section does not apply to section 5 of this chapter.

~~(b)~~ Except as provided in subsection ~~(c)~~, A person who violates this chapter commits a Class C infraction.

~~(c)~~ A person who knowingly or intentionally violates:

(1) section 3(a)(1), 3(a)(2), 3(a)(4), or 3(a)(5) of this chapter commits a Class B misdemeanor; or

(2) section 3(a)(3) of this chapter commits:

(A) a Class A misdemeanor for the first violation; or

(B) a Class D felony for the second violation or any subsequent violation.

SECTION 45. IC 9-17-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. The bureau shall adopt rules under IC 4-22-2 that:

(1) enable the owner of a motor vehicle titled in Indiana to determine:

(A) whether that motor vehicle has previously been titled in Indiana; and

(B) if the motor vehicle has previously been titled in Indiana, whether the title was issued under ~~IC 9-22-3~~; **IC 9-32-8-4**; and

(2) impose a service charge under IC 9-29-3-19 for services performed by the bureau under this section.

SECTION 46. IC 9-17-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. If a certificate of title:

(1) has been previously issued for a manufactured home in Indiana, an application for a certificate of title must be accompanied by the certificate of title; or

(2) has not previously been issued for a manufactured home in Indiana, the application must be accompanied by a manufacturer's certificate of origin as provided in ~~IC 9-17-8~~; **IC 9-32-4-3**.

SECTION 47. IC 9-18-2-26, AS AMENDED BY P.L.42-2007, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 26. (a) License plates shall be displayed as follows:

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(1) For a motorcycle, trailer, semitrailer, or recreational vehicle, upon the rear of the vehicle.

(2) For a tractor or dump truck, upon the front of the vehicle.

(3) For every other vehicle, upon the rear of the vehicle.

(b) A license plate shall be securely fastened, in a horizontal position, to the vehicle for which the plate is issued:

(1) to prevent the license plate from swinging;

(2) at a height of at least twelve (12) inches from the ground, measuring from the bottom of the license plate;

(3) in a place and position that are clearly visible;

(4) maintained free from foreign materials and in a condition to be clearly legible; and

(5) not obstructed or obscured by tires, bumpers, accessories, or other opaque objects.

**An interim license plate must be displayed in the manner required by IC 9-32-5-11(f).**

(c) The bureau may adopt rules the bureau considers advisable to enforce the proper mounting and securing of license plates on vehicles consistent with this chapter.

SECTION 48. IC 9-22-5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17. A person who recklessly violates section 14, ~~or~~ 15, **or 16** of this chapter commits a Class A misdemeanor.

SECTION 49. IC 9-29-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. A person described in subdivision (3) who makes an inspection under ~~IC 9-17-2-12~~ **IC 9-32-3-1(c)** may charge a fee. A fee charged under this section is subject to the following:

(1) The fee must be established by ordinance adopted by the unit (as defined in IC 36-1-2-23).

(2) The fee may not exceed five dollars (\$5).

(3) The revenue from the inspection fee shall be deposited in the following manner:

(A) A special vehicle inspection fund if the person making the inspection is a member of the county sheriff's department. The fiscal body of the unit must appropriate the money from the inspection fund only for law enforcement purposes.

(B) A local law enforcement continuing education fund established by IC 5-2-8-2 if the person making the inspection is a member of a city or town police department, a town marshal, or a town marshal deputy.

SECTION 50. IC 9-29-17 IS ADDED TO THE INDIANA CODE

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AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2011]:

**Chapter 17. Fees Under IC 9-32**

**Sec. 1. (a)** The fee for the first two (2) sets of license plates under IC 9-32-5-1 for a manufacturer or dealer is forty dollars (\$40).

**(b)** The fee for each additional set of license plates under IC 9-32-5-5 for a manufacturer or dealer is fifteen dollars (\$15).

**(c)** The secretary of state retains the fees collected under subsections (a) and (b).

**Sec. 2. (a)** The fee for a research and development license plate for a manufacturer of a vehicle subcomponent system under IC 9-32-5-3 is twenty dollars (\$20). There is no fee in addition to the regular registration fee for a research and development license plate for a manufacturer of a vehicle subcomponent system.

**(b)** The secretary of state retains the fees collected under subsection (a).

**Sec. 3. (a)** The fee for the first two (2) sets of license plates under 9-32-5-1 for a manufacturer or dealer of motorcycles is fifteen dollars (\$15).

**(b)** The fee for each additional set of license plates under 9-32-5-5 for a motorcycle manufacturer or dealer is seven dollars and fifty cents (\$7.50).

**(c)** The secretary of state retains the fees collected under subsections (a) and (b).

**Sec. 4. (a)** The fee for the issuance of an interim dealer license plate under IC 9-32-5-11 is one dollar (\$1).

**(b)** The secretary of state retains the fees collected under subsection (a).

**Sec. 5. (a)** The fees under IC 9-32-7-2 for a boat dealer's license for each full year are as follows:

**(1)** For a Class A dealer, thirty dollars (\$30) for the first place of business, plus ten dollars (\$10) for each additional location.

**(2)** For a Class B dealer, twenty dollars (\$20).

**(b)** The secretary of state retains the fees collected under subsection (a).

**Sec. 6. (a)** The fee for a change of business name or location under IC 9-32-7-4 is five dollars (\$5).

**(b)** The fee is retained by the secretary of state.

**Sec. 7.** The fee to obtain a copy of an affidavit filed under IC 9-32-8 is two dollars (\$2).

**Sec. 8. (a)** The fee for a certificate of salvage title under IC 9-32-8 is four dollars (\$4).

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(b) The fee for a delinquent certificate of salvage title under IC 9-32-8 is ten dollars (\$10). The bureau shall collect this fee if:

(1) a purchaser or transferee fails to apply for a certificate of salvage title or a transfer of title, by assignment, not later than thirty-one (31) days after the salvage motor vehicle is purchased or otherwise acquired; or

(2) the owner of a salvage motor vehicle retains possession of the salvage motor vehicle and the owner fails to apply for a certificate of salvage title not later than thirty-one (31) days after the settlement of loss with the insurance company.

(c) The fee for a duplicate certificate of salvage title under IC 9-32-8 is four dollars (\$4).

Sec. 9. (a) The fee for an original license under IC 9-32-9 is ten dollars (\$10).

(b) The fee for a supplemental license under IC 9-32-9 is five dollars (\$5).

(c) The fee for a renewal license under IC 9-32-9 is ten dollars (\$10).

(d) A licensing fee that is submitted with an application under IC 9-32-9 shall be returned to the applicant if the application is rejected by the secretary of state.

Sec. 10. The fee for a license for a manufacturer or a distributor under IC 9-32-11-1 is thirty-five dollars (\$35), including a factory branch as set forth in IC 9-13-2-97(b)(1). The fees collected shall be deposited as set forth in IC 9-32-6-3.

Sec. 11. The fee for a license for a dealer or an automobile auctioneer under IC 9-32-11-1 is:

(1) thirty dollars (\$30) for the first place of business; and

(2) an additional ten dollars (\$10) for each location not immediately adjacent to the first place of business.

The fees collected shall be deposited as set forth in IC 9-32-6-3.

Sec. 12. The fee for a factory representative, a distributor representative, a wholesale dealer, a transfer dealer, a converter manufacturer, or an automotive mobility dealer under IC 9-32-11-1 is twenty dollars (\$20). The fee for an automotive mobility dealer who:

(1) buys or sells vehicles, or both;

(2) sells, installs, or services, offers to sell, install, or service, or solicits or advertises the sale, installation, or servicing of equipment or modifications specifically designed to facilitate use or operation of a vehicle by an individual who is disabled or aged; or

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(3) performs acts described in both subdivisions (1) and (2); is twenty dollars (\$20). The fees collected shall be deposited as set forth in IC 9-32-6-3.

**Sec. 13.** The fee for a dealer sales agent registration under IC 9-32-11-2 is twenty dollars (\$20). If the filing fee results in a denial or withdrawal, the division shall retain the entire fee. The fees collected under this section shall be deposited in the dealer compliance account established by IC 9-32-6-1.

**Sec. 14.** The fee for a business name or location change under IC 9-32-11-5 is five dollars (\$5).

**Sec. 15.** The license fee for each offsite license issued under IC 9-32-11-10 is twenty-five dollars (\$25).

**Sec. 16.** The permit fee for a special event permit issued under IC 9-32-11-17 is two hundred fifty dollars (\$250).

**Sec. 17.** (a) Except as otherwise provided in subsection (b), subsection (c), and IC 9-29-1-2, registration fees collected under IC 9-32 and fees collected under sections 8 through 9 of this chapter shall be paid into the state general fund for credit to the motor vehicle highway account.

(b) Fees collected under this chapter for license plates issued under IC 9-32-5 by the secretary of state shall be deposited as follows:

(1) Thirty percent (30%) to the dealer compliance account established by IC 9-32-6-1.

(2) Seventy percent (70%) to the motor vehicle highway account.

(c) Notwithstanding subsection (b), fees collected under this chapter for interim license plates issued under IC 9-32-5-11 by the secretary of state shall be deposited as follows:

(1) Ninety percent (90%) to the dealer compliance account established by IC 9-32-6-1.

(2) Ten percent (10%) to the motor vehicle highway account.

**Sec. 18.** The revenue from the:

(1) certificate of salvage titles collected under IC 9-32-8; and

(2) license fees collected under IC 9-32-9;

shall be deposited in the motor vehicle highway account.

**Sec. 19.** The revenue from sections 13 through 16 of this chapter shall be deposited in the dealer compliance account established by IC 9-32-6-1.

SECTION 51. IC 9-31-3-5, AS AMENDED BY P.L.106-2008, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. A motorboat that has never been registered in

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Indiana and that is purchased from a dealer licensed by the secretary of state under ~~IC 9-31-4~~ **IC 9-32-7** may be operated on the waters of Indiana for a period of thirty-one (31) days from the date of purchase if the operator has in the operator's possession the following:

(1) A bill of sale from the dealer giving the purchaser's name and address, the date of purchase, and the make and type of boat or the hull identification number.

(2) A temporary permit displayed on the forward portion of the boat, as provided in section 6 of this chapter.

SECTION 52. IC 9-31-3-19, AS AMENDED BY P.L.106-2008, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 19. A dealer licensed by the secretary of state under ~~IC 9-31-4~~ **IC 9-32-7-2** may, upon application to the secretary of state, obtain a certificate of number for use in the testing or demonstrating of motorboats upon payment of the fee prescribed under IC 9-29-15-6 for each registration number. The secretary of state shall issue one (1) plate for each certificate of number assigned under this section. The plate must be displayed within a boat that is being tested or demonstrated while the boat is being tested or demonstrated.

SECTION 53. IC 9-32 IS ADDED TO THE INDIANA CODE AS A **NEW ARTICLE** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

## **ARTICLE 32. DEALER SERVICES**

### **Chapter 1. Definitions**

**Sec. 1. The definitions in this chapter apply throughout this article.**

**Sec. 2. "Adjusted or net capitalized cost" means the capitalized cost, less any capitalized cost reduction payments made by a retail lessee at the inception of a lease agreement. The adjusted or net capitalized cost is the basis for calculating the amount of a retail lessee's periodic payment under a lease agreement.**

**Sec. 3. "Advisory board" means the motor vehicle advisory board established by IC 9-32-10-1.**

**Sec. 4. "Automobile auctioneer" means a person who is engaged in providing a place of business or facilities for the purchase and sale of more than twelve (12) motor vehicles on the basis of bids by persons acting for themselves or others per calendar years. The term includes an auctioneer that as a part of the business of the auctioneer participates in providing a place of business or facilities for the purchase and sale of motor vehicles on the basis of bids by persons acting for themselves or others. The term does not include a person acting only as an auctioneer under IC 25-6.1-1.**

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1       **Sec. 5. "Automotive salvage rebuilder" means a person, firm,**  
 2       **limited liability company, corporation, or other legal entity**  
 3       **engaged in the business:**

- 4           (1) **of acquiring salvage motor vehicles for the purpose of**  
 5           **restoring, reconstructing, or rebuilding the vehicles; and**  
 6           (2) **in the resale of these vehicles for use on the highway.**

7       **Sec. 6. "Broker" means a person that, for a fee, a commission,**  
 8       **or other valuable consideration, arranges or offers to arrange a**  
 9       **transaction involving the sale, for purposes other than resale, of a**  
 10       **new or used motor vehicle and who is not:**

- 11           (1) **a dealer or an employee of a dealer;**  
 12           (2) **a distributor or an employee of a distributor; or**  
 13           (3) **at any point in the transaction, the bona fide owner of the**  
 14           **vehicle involved in the transaction.**

15       **Sec. 7. (a) "Capitalized cost" means the amount that, after**  
 16       **deducting any capitalized cost reduction, serves as the basis for**  
 17       **determining the base lease payment, which is the part of the**  
 18       **periodic lease payment that is the sum of:**

- 19           (1) **the average periodic lease charge; and**  
 20           (2) **the average periodic depreciation.**

21       **(b) For a single payment lease, the base lease payment is the sum**  
 22       **of:**

- 23           (1) **the average periodic lease charge multiplied by the**  
 24           **number of months in the term of the lease; and**  
 25           (2) **the average periodic depreciation multiplied by the**  
 26           **number of months in the term of the lease.**

27       **(c) The capitalized cost may include any of the following:**

- 28           (1) **Taxes.**  
 29           (2) **Registration fees.**  
 30           (3) **License fees.**  
 31           (4) **Insurance charges.**  
 32           (5) **Charges for guaranteed auto protection or GAP coverage.**  
 33           (6) **Charges for service contracts and extended warranties.**  
 34           (7) **Fees and charges for accessories and for installing**  
 35           **accessories.**  
 36           (8) **Charges for delivery, service, and repair.**  
 37           (9) **Administrative fees, acquisition fees, and all fees or**  
 38           **charges for providing services incidental to the lease**  
 39           **agreement.**  
 40           (10) **The unpaid balance of an amount financed under an**  
 41           **outstanding motor vehicle loan agreement or motor vehicle**  
 42           **retail installment contract with respect to a motor vehicle**

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used as a trade-in vehicle.

(11) The unpaid part of the early termination obligation under an outstanding lease agreement.

(12) The first periodic payment due at the inception of the lease agreement, if not otherwise paid by the retail lessee.

Sec. 8. "Capitalized cost reduction" means a payment made by cash, check, credit card debit, net vehicle trade-in, rebate, or other similar means in the nature of a down payment or credit, made by a retail lessee at the inception of a lease agreement, for the purpose of reducing the capitalized cost and does not include any periodic payments received by the retail lessor at the inception of the lease agreement.

Sec. 9. "Director" means the director of the dealer services division within the office of the secretary of state appointed under IC 4-5-1-12(b).

Sec. 10. "Division" means the dealer services division within the office of the secretary of state established by IC 4-5-1-12(a).

Sec. 11. "Existing franchise" means the franchise in effect on the date of a franchisee's death or incapacity.

Sec. 12. "Fair market value" means:

(1) the average trade-in value found in the National Automobile Dealers Association (NADA) Official Used Car Guide, vehicle valuations determined by CCC Information Services, Inc. (CCC), or valuations determined by other authorities approved by the bureau; or

(2) the fair market value determined by the bureau under IC 9-32-8-3.

Sec. 13. (a) "Flood damaged vehicle" means a passenger motor vehicle that satisfies either of the following:

(1) The vehicle has been acquired by an insurance company as part of a damage settlement due to water damage.

(2) The vehicle has been submerged in water to the point that rising water has reached over the door sill, has entered the passenger or trunk compartment, and has exposed any electrical, computerized, or mechanical component to water.

(b) The term does not include a passenger motor vehicle that an inspection conducted by an insurance adjuster or estimator, a motor vehicle repairer, or a motor vehicle dealer determines:

(1) has no electrical, computerized, or mechanical components that were damaged by water; or

(2) has one (1) or more electrical, computerized, or mechanical components that were damaged by water, and all

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such damaged components have been repaired or replaced.

Sec. 14. "Franchise" means an oral or a written agreement for a definite or an indefinite period in which a manufacturer or distributor grants to a dealer a right to use a trade name, trade or service mark, or related characteristic, and in which there is a community of interest in the marketing of motor vehicles or related services at retail or otherwise.

Sec. 15. "Franchisee" means a dealer to whom a franchise is granted.

Sec. 16. "Franchisor" means a manufacturer or distributor who grants a franchise to a dealer.

Sec. 17. "Labor rate" means the hourly labor rate charged by a franchisee for service, filed periodically with the division as the division may require, and posted prominently in the franchisee's service department.

Sec. 18. "Lease agreement" means a written agreement entered into in Indiana for the transfer from a retail lessor to a retail lessee of the right to possess and use a motor vehicle in exchange for consideration for a scheduled term exceeding four (4) months, whether or not the retail lessee has the option to purchase or otherwise become the owner of the motor vehicle upon expiration of the agreement. The term does not include an agreement that covers an absolute sale, a sale pending approval, or a retail installment sale.

Sec. 19. "Lease transaction" means a presentation made to a retail lessee concerning a motor vehicle, including a sales presentation or a document presented to the retail lessee, resulting in the execution of a lease agreement.

Sec. 20. "Material fact" includes, but is not limited to, the following:

- (1) The address of the principal place of business.
- (2) The type of business engaged in by the dealer or dealer sales agent.
- (3) Information required by the secretary in a license application.
- (4) Criminal convictions.
- (5) Information requested by the secretary regarding the offer or sale of motor vehicles.

Sec. 21. "Record" includes, but is not limited to, the following:

- (1) Bills of sale.
- (2) Finance agreements.
- (3) Titles.

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(4) Inventory records.

(5) Sales receipts from auctions.

(6) Form ST-108 (department of state revenue certificate of gross retail or use tax paid on the purchase of a motor vehicle or watercraft).

(7) Interim plate log.

**Sec. 22. "Relevant market area" means the following:**

(1) With respect to a new motor vehicle dealer who plans to relocate the dealer's place of business in a county having a population of more than one hundred thousand (100,000), the area within a radius of six (6) miles of the intended site of the relocated dealer. The six (6) mile distance shall be determined by measuring the distance between the nearest surveyed boundary of the existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the relocated new motor vehicle dealer's place of business.

(2) With respect to a:

(A) proposed new motor vehicle dealer; or

(B) new motor vehicle dealer who plans to relocate the dealer's place of business in a county having a population that is not more than one hundred thousand (100,000); the area within a radius of ten (10) miles of the intended site of the proposed or relocated dealer. The ten (10) mile distance shall be determined by measuring the distance between the nearest surveyed boundary line of the existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer's principal place of business.

**Sec. 23. "Retail lessee" means an individual who executes a lease agreement for a motor vehicle from a retail lessor primarily for personal, family, or household purposes.**

**Sec. 24. "Retail lessor" means a person who regularly engages in the business of selling or leasing motor vehicles and who offers or arranges a lease agreement for a motor vehicle. The term includes an agent or affiliate who acts on behalf of the retail lessor and excludes any assignee of the lease agreement.**

**Sec. 25. "Sale" includes every contract of sale, contract to sell, or disposition of a motor vehicle or interest in a motor vehicle for value.**

**Sec. 26. "Secretary" refers to the secretary of state holding office as set forth in IC 4-5-1-1.**

**Sec. 27. "Transfer dealer" means a person other than a dealer,**

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1 manufacturer, or wholesale dealer who has the necessity of  
2 transferring a minimum of twelve (12) motor vehicles during a  
3 license year as part of the transfer dealer's primary business  
4 function.

5 Sec. 28. "Uniform time standards manual" means a schedule  
6 established by a manufacturer or distributor setting forth the time  
7 allowances for the diagnosis and performance of warranty work  
8 and service.

9 Sec. 29. "Used parts dealer" means a person who primarily  
10 buys, sells, barter, exchanges, or deals in used major component  
11 parts. The term does not include a scrap metal processor.

12 Sec. 30. "Wholesale dealer" means a person who is engaged in  
13 the business of buying or selling motor vehicles for resale to other  
14 dealers, wholesale dealers, transfer dealers, or persons other than  
15 the general public.

## 16 Chapter 2. Powers and Duties of the Division

17 Sec. 1. The secretary may delegate any or all of the rights,  
18 duties, or obligations of the secretary under this article to:

- 19 (1) the director; or
- 20 (2) another designee under the supervision and control of the  
21 secretary.

22 The individual delegated shall have the authority to adopt and  
23 enforce rules under IC 4-22-2 as the secretary under IC 4-5-1-11.  
24 The secretary may also adopt emergency rules under  
25 IC 4-22-2-37.1 to carry out its duties under this article.

26 Sec. 2. The secretary shall do the following:

- 27 (1) Administer and enforce:
  - 28 (A) this article concerning the division; and
  - 29 (B) the policies and procedures of the division.
- 30 (2) Organize the division in the manner necessary to carry out  
31 the duties of the division.
- 32 (3) Perform other duties as required by the division.

## 33 Chapter 3. Obtaining, Expiration, Replacement and Transfer of 34 Certificate of Title

35 Sec. 1. (a) As used in this section, "dealer" refers to a dealer that  
36 has:

- 37 (1) been in business for at least five (5) years; and
- 38 (2) sold at least one hundred fifty (150) motor vehicles during  
39 the preceding calendar year.

40 (b) This section does not apply to the following:

- 41 (1) A new motor vehicle or recreational vehicle sold by a  
42 dealer licensed by the state.

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(2) A motor vehicle or recreational vehicle transferred or assigned on a certificate of title issued by the bureau.

(3) A motor vehicle that is registered under the International Registration Plan.

(4) A motor vehicle that is titled in the name of a financial institution, lending institution, or insurance company in Canada and imported by a registered importer, if:

(A) the registered importer complies with IC 9-17-2-12.5(a); and

(B) IC 9-17-2-12.5(d) does not apply to the motor vehicle.

(5) A motor vehicle that is titled in another state and is in the lawful possession of a financial institution, a lending institution, or an insurance company, if:

(A) the financial institution, lending institution, or insurance company complies with IC 9-17-2-12.5(b); and

(B) IC 9-17-2-12.5(d) does not apply to the motor vehicle.

(c) An application for a certificate of title for a motor vehicle or recreational vehicle may not be accepted by the bureau unless the motor vehicle or recreational vehicle has been inspected by one (1) of the following:

(1) An employee of a dealer designated by the secretary to perform an inspection.

(2) A military policeman assigned to a military post in Indiana.

(3) A police officer.

(4) A designated employee of the bureau.

(d) A person described in subsection (c) inspecting a motor vehicle, semitrailer, or recreational vehicle shall do the following:

(1) Make a record of inspection upon the application form prepared by the bureau.

(2) Verify the facts set out in the application.

Sec. 2. (a) If a vehicle for which a certificate of title has been issued is sold or if the ownership of the vehicle is transferred in any manner other than by a transfer on death conveyance under IC 9-17-3-9, the person who holds the certificate of title must do the following:

(1) Endorse on the certificate of title an assignment of the certificate of title with warranty of title, in a form printed on the certificate of title, with a statement describing all liens or encumbrances on the vehicle.

(2) Except as provided in subdivisions (4) and (5), deliver the certificate of title to the purchaser or transferee at the time of

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the sale or delivery to the purchaser or transferee of the vehicle, if the purchaser or transferee has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens.

(3) Complete all information concerning the purchase on the certificate of title, including, but not limited to:

(A) the name and address of the purchaser; and

(B) the sale price of the vehicle.

(4) In the case of a sale or transfer between vehicle dealers licensed by this state or another state, deliver the certificate of title within twenty-one (21) days after the date of the sale or transfer.

(5) Deliver the certificate of title to the purchaser or transferee within twenty-one (21) days after the date of sale or transfer to the purchaser or transferee of the vehicle, if all of the following conditions exist:

(A) The seller or transferor is a vehicle dealer licensed by the state under IC 9-32.

(B) The vehicle dealer is not able to deliver the certificate of title at the time of sale or transfer.

(C) The vehicle dealer provides the purchaser or transferee with an affidavit under section 3 of this chapter.

(D) The purchaser or transferee has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens.

(b) A licensed dealer may offer for sale a vehicle for which the dealer does not possess a certificate of title, if the dealer can comply with subsection (a)(4) or (a)(5) at the time of the sale.

(c) A vehicle dealer who fails to deliver a certificate of title within the time specified under this section is subject to the following civil penalties:

(1) One hundred dollars (\$100) for the first violation.

(2) Two hundred fifty dollars (\$250) for the second violation.

(3) Five hundred dollars (\$500) for all subsequent violations.

Payment shall be made to the secretary of state and deposited in the dealer enforcement account established under IC 9-32-6-2.

(d) If a purchaser or transferee does not receive a valid certificate of title within the time specified by this section, the purchaser or transferee has the right to return the vehicle to the vehicle dealer ten (10) days after giving the vehicle dealer written notice demanding delivery of a valid certificate of title and the

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dealer's failure to deliver a valid certificate of title within that ten (10) day period. Upon return of the vehicle to the dealer in the same or similar condition as delivered to the purchaser or transferee under this section, the vehicle dealer shall pay to the purchaser or transferee the purchase price plus sales taxes, finance expenses, insurance expenses, and any other amount paid to the dealer by the purchaser.

(e) For purposes of this subsection, "timely deliver", with respect to a third party, means to deliver to the purchaser or transferee with a postmark dated or hand delivered not more than ten (10) business days after there is no obligation secured by the vehicle. If the dealer's inability to timely deliver a valid certificate of title results from the acts or omissions of a third party who has failed to timely deliver a valid certificate of title to the dealer, the dealer is entitled to claim against the third party one hundred dollars (\$100). If:

(1) the dealer's inability to timely deliver a valid certificate of title results from the acts or omissions of a third party who has failed to timely deliver the certificate of title in the third party's possession to the dealer; and

(2) the failure continues for ten (10) business days after the dealer gives the third party written notice of the failure; the dealer is entitled to claim against the third party all damages sustained by the dealer in rescinding the dealer's sale with the purchaser or transferee, including the dealer's reasonable attorney's fees.

(f) If a vehicle for which a certificate of title has been issued by another state is sold or delivered, the person selling or delivering the vehicle must deliver to the purchaser or receiver of the vehicle a proper certificate of title with an assignment of the certificate of title in a form prescribed by the bureau.

(g) The original certificate of title and all assignments and subsequent reissues of the certificate of title shall be retained by the bureau and appropriately classified and indexed in the most convenient manner to trace the title to the vehicle described in the certificate of title.

(h) A dealer shall make payment to a third party to satisfy any obligation secured by the vehicle within five (5) days after the date of sale.

Sec. 3. The affidavit required by section 2(a)(5)(C) of this chapter shall be printed in the following form:

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1 ) ss:

2 COUNTY OF \_\_\_\_\_ )

3 I affirm under the penalties for perjury that all of the following  
4 are true:

5 (1) That I am a dealer licensed under IC 9-32.

6 (2) That I cannot deliver a valid certificate of title to the retail  
7 purchaser of the vehicle described in paragraph (3) at the  
8 time of sale of the vehicle to the retail purchaser. The identity  
9 of the previous seller or transferor is  
10 \_\_\_\_\_ . Payoff of lien was made on  
11 (date) \_\_\_\_\_. I expect to deliver a valid and transferable  
12 certificate of title not later than (date) \_\_\_\_\_ from  
13 the (State of) \_\_\_\_\_ to the purchaser.

14 (3) That I will undertake reasonable commercial efforts to  
15 produce the valid certificate of title. The vehicle identification  
16 number is \_\_\_\_\_.

17 Signed \_\_\_\_\_, Dealer

18 By \_\_\_\_\_

19 Dated \_\_\_\_\_, \_\_\_\_

20 CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF  
21 THIS AFFIDAVIT.

22 \_\_\_\_\_  
23 Customer Signature

24 NOTICE TO THE CUSTOMER

25 If you do not receive a valid certificate of title within twenty-one  
26 (21) days from the date of sale, you have the right to return the  
27 vehicle to the vehicle dealer ten (10) days after giving the vehicle  
28 dealer written notice demanding delivery of a valid certificate of  
29 title and after the vehicle dealer's failure to deliver a valid  
30 certificate of title within that ten (10) day period. Upon return of  
31 the vehicle to the vehicle dealer in the same or similar condition as  
32 when it was delivered to you, the vehicle dealer shall pay you the  
33 purchase price plus sales taxes, finance expenses, insurance  
34 expenses, and any other amount that you paid to the vehicle dealer.

35 If a lien is present on the previous owner's certificate of title, it is  
36 the responsibility of the third party lienholder to timely deliver the  
37 certificate of title in the third party's possession to the dealer not  
38 more than ten (10) business days after there is no obligation  
39 secured by the vehicle. If the dealer's inability to deliver a valid  
40 certificate of title to you within the above-described ten (10) day  
41 period results from the acts or omissions of a third party who has  
42 failed to timely deliver the certificate of title in the third party's

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possession to the dealer, the dealer may be entitled to claim against the third party the damages allowed by law.

**Chapter 4. Manufacturers, Converter Manufacturers, and Dealers; Manufacturers' Certificates of Origin**

**Sec. 1. This chapter does not apply to an off-road vehicle.**

**Sec. 2. A manufacturer, a converter manufacturer, an automotive mobility dealer, a dealer, or other person may not sell or otherwise dispose of a new motor vehicle to another person, to be used by the other person for purposes of display or resale, without delivering to the other person a manufacturer's certificate of origin under this chapter that indicates the assignments of the certificate of origin necessary to show the ownership of the title to a person who purchases the motor vehicle.**

**Sec. 3. A person may not purchase or acquire a new motor vehicle without obtaining a valid manufacturer's certificate of origin from the seller of the motor vehicle.**

**Sec. 4. (a) Except as provided in subsection (b), certificates of origin and assignments of certificates of origin must be in a form:**

- (1) prescribed by the bureau; or**
- (2) approved by the bureau.**

**(b) A manufacturer's certificate of origin for a low speed vehicle must indicate that the motor vehicle is a low speed vehicle.**

**Sec. 5. A manufacturer, a converter manufacturer, an automotive mobility dealer, or a dealer must have:**

- (1) a certificate of title;**
- (2) an assigned certificate of title;**
- (3) a manufacturer's certificate of origin;**
- (4) an assigned manufacturer's certificate of origin; or**
- (5) other proof of ownership or evidence of right of possession as determined by the secretary;**

**for a motor vehicle, semitrailer, or recreational vehicle in the manufacturer's, converter manufacturer's, automotive mobility dealer's, or dealer's possession.**

**Sec. 6. (a) If a dealer purchases or acquires ownership of a:**

- (1) motor vehicle;**
- (2) semitrailer; or**
- (3) recreational vehicle;**

**in a state that does not have a certificate of title law, the dealer shall apply for an Indiana certificate of title for the motor vehicle, semitrailer, or recreational vehicle not more than thirty-one (31) days from the date of purchase or the date ownership of the motor vehicle, semitrailer, or recreational vehicle was acquired.**

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(b) The bureau shall collect a delinquent title fee as provided in IC 9-29-4-4 if a dealer fails to apply for a certificate of title for a motor vehicle, semitrailer, or recreational vehicle as described under subsection (a).

Sec. 7. The bureau shall provide forms on which applications for certificates of title and assignments of certificates of title must be made under this chapter.

Sec. 8. A manufacturer, a converter manufacturer, an automotive mobility dealer, or a dealer shall deliver an assigned certificate of title or certificate of origin to a person entitled to the certificate of title or certificate of origin.

Sec. 9. (a) In order to obtain or maintain a manufacturer's, a converter manufacturer's, an automotive mobility dealer's, or a dealer's license from the secretary, a person must agree to allow a police officer or an authorized representative of the secretary to inspect:

(1) certificates of origin, certificates of title, assignments of certificates of origin and certificates of title, or other proof of ownership or evidence of right of possession as determined by the secretary; and

(2) motor vehicles, semitrailers, or recreational vehicles that are held for resale by the manufacturer, converter manufacturer, automotive mobility dealer, or dealer; in the manufacturer's, converter manufacturer's, automotive mobility dealer's, or dealer's place of business during reasonable business hours.

(b) A certificate of title, a certificate of origin, and any other proof of ownership described under subsection (a):

(1) must be readily available for inspection by or delivery to the proper persons; and

(2) may not be removed from Indiana.

#### Chapter 5. Dealer License Plates

Sec. 1. A person licensed under IC 9-32-11 may apply for a dealer license plate. The application must include any information the secretary reasonably requires. Upon application, a distinctive registration number shall be assigned to each applicant. Two (2) certificates of registration and two (2) metal license plates bearing the registration number of the applicant shall then be issued to the applicant.

Sec. 2. (a) The secretary shall issue dealer license plates under this chapter according to the following classifications:

(1) Dealer-new.

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1 (2) Dealer-used.

2 (3) Manufacturer.

3 (b) The secretary may adopt rules under IC 4-22-2 to establish  
4 additional classifications of dealer license plates and may prescribe  
5 the general conditions for usage of an additional classification. The  
6 secretary shall establish the classification of antique car museum  
7 dealer license plates.

8 Sec. 3 (a) The secretary shall:

9 (1) issue a research and development license plate under this  
10 chapter to a manufacturer of a vehicle subcomponent system;  
11 and

12 (2) adopt rules under IC 4-22-2 to prescribe the general  
13 conditions for the:

14 (A) application;

15 (B) issuance; and

16 (C) use;

17 of research and development license plates for manufacturers of  
18 vehicle component systems.

19 (b) The fee for a research and development license plate for a  
20 manufacturer of a vehicle subcomponent system is the fee under  
21 IC 9-29-17-2.

22 (c) A research and development license plate for a manufacturer  
23 of a vehicle subcomponent system shall be displayed in accordance  
24 with section 2(b) of this chapter.

25 Sec. 4. The secretary shall determine the color, dimension, and  
26 style of the letters and the information required on a dealer license  
27 plate issued under this chapter.

28 Sec. 5. Upon payment of the fee under IC 9-29-17-1(b), an  
29 applicant may obtain additional dealer license plates of the same  
30 category. The applicant must demonstrate the applicant's need for  
31 additional plates by stating the applicant's number of employees,  
32 annual sales, and other supporting factors. The secretary shall  
33 determine whether the applicant is entitled to additional plates.

34 Sec. 6. Dealer license plates issued to licensed dealers under this  
35 chapter expire as follows:

36 (1) A person whose business name begins with the letters A  
37 through B, inclusive, March 1 of each year.

38 (2) A person whose business name begins with the letters C  
39 through D, inclusive, April 1 of each year.

40 (3) A person whose business name begins with the letters E  
41 through G, inclusive, May 1 of each year.

42 (4) A person whose business name begins with the letters H

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through I, inclusive, June 1 of each year.

(5) A person whose business name begins with the letters J through L, inclusive, July 1 of each year.

(6) A person whose business name begins with the letters M through O, inclusive, August 1 of each year.

(7) A person whose business name begins with the letters P through R, inclusive, September 1 of each year.

(8) A person whose business name begins with the letters S through T, inclusive, October 1 of each year.

(9) A person whose business name begins with the letters U through Z, inclusive, November 1 of each year.

Dealer license plates issued to a sole proprietor expire based upon the name of the sole proprietorship.

Sec. 7. (a) Except as provided in sections 8 and 9 of this chapter, dealer-new, dealer-used, manufacturer and wholesale license plates may be used only on motor vehicles in the:

- (1) dealer's inventory being held for sale;
- (2) usual operation of that manufacturer's or dealer's business;
- (3) movement of that manufacturer's or dealer's inventory; or
- (4) inventory of a manufacturer or dealer that is unattended by that manufacturer or dealer or the dealer's agent for a maximum of ten (10) days by a prospective buyer or a service customer.

(b) The motor vehicles referenced in subsection (a) must be:

- (1) primarily used or stored at an address within Indiana; or
- (2) transported to or from an address within Indiana.

Sec. 8. Dealer-new, dealer-used, manufacturer and wholesale license plates may be used without restriction by a manufacturer, a dealer, or an employee of a manufacturer or a dealer in compliance with rules adopted by the secretary to prohibit use of the plates solely to avoid payment of applicable taxes.

Sec. 9. Dealer-new, dealer-used, manufacturer and wholesale license plates may be used without restriction by a designee of a dealer or a designee of a manufacturer under rules adopted by the secretary. The rules must provide the following:

- (1) The dealer or manufacturer is to be assessed and pay the motor vehicle excise tax under IC 6-6-5 attributable to that part of the total year that the designee operates the motor vehicle.
- (2) The dealer or manufacturer shall report to the secretary the date of assignment to a designee, the designee's name and

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address, and the date of termination of the assignment within ten (10) days of the assignment or termination.

(3) The tax calculated in subdivision (1) shall be paid within thirty (30) days of the termination of the assignment to the designee or at the time the dealer or manufacturer purchases license plates under this chapter.

**Sec. 10. Dealer-new, dealer-used, manufacturer, and wholesale license plates may not be used on a vehicle that:**

(1) is required to be registered; and

(2) has a fee charged by dealers to others for the use of the vehicle.

**Sec. 11. (a)** The secretary may issue an interim license plate to a dealer or manufacturer who is licensed and has been issued a license plate under section 2 of this chapter.

(b) The secretary shall prescribe the form of an interim license plate issued under this section. However, a plate must bear the assigned registration number and provide sufficient space for the expiration date as provided in subsection (c).

(c) Whenever a dealer or manufacturer sells a motor vehicle, the dealer or manufacturer may provide the buyer with an interim license plate. The dealer shall, in the manner provided by the secretary, affix on the plate in numerals and letters at least three (3) inches high the date on which the interim license plate expires.

(d) An interim license plate authorizes a motor vehicle owner to operate the vehicle for a maximum period of thirty-one (31) days from the date of sale of the vehicle to the vehicle's owner or until a regular license plate is issued, whichever occurs first.

(e) A motor vehicle that is required by law to display license plates on the front and rear of the vehicle is required to display only a single interim plate.

(f) An interim plate shall be displayed:

(1) in the same manner required in IC 9-18-2-26; or

(2) in a location on the left side of a window facing the rear of the motor vehicle that is clearly visible and unobstructed. The plate must be affixed to the window of the motor vehicle.

(g) The dealer must provide an ownership document to the purchaser at the time of issuance of the interim plate that must be kept in the motor vehicle during the time period an interim plate is used.

(h) All interim plates not issued by the dealer must be retained in the possession of the dealer at all times.

**Sec. 12.** A dealer may not knowingly or intentionally issue an

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1 altered interim license plate or an interim license plate with false  
2 or fictitious information.

3 Sec. 13. A person may not knowingly or intentionally operate a  
4 vehicle displaying an altered interim license plate issued under  
5 section 11 of this chapter.

6 Sec. 14. A record directly related to the use of interim plates by  
7 a dealer must be made available to an investigating employee of the  
8 secretary upon demand at the place of business of the dealer.

9 Chapter 6. Accounts and Distribution of License and Permit  
10 Fees Under IC 9-32-11

11 Sec. 1. (a) The dealer compliance account is established as a  
12 separate account to be administered by the secretary. The funds in  
13 the account must be available, with the approval of the budget  
14 agency, for use in enforcing and administering this article.

15 (b) The expenses of administering the dealer compliance  
16 account shall be paid from money in the account.

17 (c) The treasurer of state shall invest the money in the dealer  
18 compliance account not currently needed to meet the obligations  
19 of the account in the same manner as other public money may be  
20 invested. Interest that accrues from these investments shall be  
21 deposited in the account.

22 (d) The dealer compliance account consists of the following:

23 (1) Money deposited under:

24 (A) IC 9-29-17-17(b);

25 (B) IC 9-29-17-17(c);

26 (C) IC 9-29-17-19; and

27 (D) section 3(1) of this chapter.

28 (2) Appropriations to the account from other sources.

29 (3) Grants, gifts, donations, or transfers intended for deposit  
30 in the account.

31 (4) Interest that accrues from money in the account.

32 (e) Money in the dealer compliance account at the end of a state  
33 fiscal year does not revert to the state general fund.

34 (f) Money in the dealer compliance account is continuously  
35 appropriated to the secretary for the purposes of the account.

36 Sec. 2. (a) The dealer enforcement account is established as a  
37 separate account to be administered by the secretary.

38 (b) The dealer enforcement account consists of money deposited  
39 from:

40 (1) IC 9-32-3-2(c);

41 (2) IC 9-32-16-1(f);

42 (3) IC 9-32-17-9;

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- 1 (4) IC 9-32-17-11;  
 2 (5) IC 9-32-16-44(d); and  
 3 (6) IC 9-32-16-46(d).

4 The funds in the account shall be available, with the approval of  
 5 the budget agency, for use to augment and supplement the funds  
 6 appropriated for the administration of this article.

7 (c) The treasurer of state shall invest the money in the dealer  
 8 enforcement account not currently needed to meet the obligations  
 9 of the account in the same manner as other public money may be  
 10 invested. Interest that accrues from these investments shall be  
 11 deposited into the account.

12 (d ) Money in the dealer enforcement account at the end of the  
 13 state fiscal year does not revert to the state general fund.

14 (e) Money in the dealer enforcement account is continuously  
 15 appropriated to the secretary for the purposes of the account.

16 Sec. 3. All money collected by the secretary from  
 17 manufacturers, factory branches, distributors, dealers, automobile  
 18 auctioneers, factory representatives, distributor representatives,  
 19 wholesale dealers, transfer dealers, converter manufacturers, or  
 20 automotive mobility dealers for licenses and permit fees under  
 21 IC 9-29-17-10 through IC 9-29-17-12 shall be deposited as follows:

- 22 (1) Thirty percent (30%) to the dealer compliance account  
 23 established by section 1 of this chapter.  
 24 (2) Forty percent (40%) to the motor vehicle highway  
 25 account.  
 26 (3) Twenty percent (20%) to the state police department for  
 27 use in enforcing odometer laws.  
 28 (4) Ten percent (10%) to the attorney general for use in  
 29 enforcing odometer laws.

### 30 Chapter 7. Boat Dealers

31 Sec. 1. Boat dealers are classified for the purposes of this  
 32 chapter and IC 9-29-17-5 into two (2) categories as follows:

- 33 (1) Class A dealers have more than one (1) business location  
 34 for the sale of boats.  
 35 (2) Class B dealers have only one (1) business location for the  
 36 sale of boats.

37 Sec. 2. A person must be licensed under this chapter before the  
 38 person may engage in the business of selling boats.

39 Sec. 3. (a) An application for a boat dealer license must meet all  
 40 the following conditions:

- 41 (1) Be accompanied by the fee under IC 9-29-17-5.  
 42 (2) Be on a form prescribed by the secretary.

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(3) Contain any information that the secretary reasonably needs to enable the secretary to determine fully the:

(A) qualifications and eligibility of the applicant to receive the license;

(B) location of each of the applicant's places of business in Indiana; and

(C) ability of the applicant to conduct properly the business for which the application is submitted.

(b) An application for a license as a boat dealer must show whether the applicant proposes to sell new or used boats or both new and used boats.

Sec. 4. A license issued to a boat dealer must specify the location of each place of business and shall be conspicuously displayed at each business location. If a business name or location is changed, the holder shall notify the secretary within ten (10) days and remit the fee specified under IC 9-29-17-6. The secretary shall endorse that change on the boat dealer license if it is determined that the change is not subject to other provisions of this chapter.

Sec. 5. A boat dealer license issued under this chapter is valid for one (1) year after the date the boat dealer license is issued. All license fees shall be paid at the annual rate under IC 9-29-17-5.

Sec. 6. (a) A person licensed under this chapter shall furnish evidence that the person currently has liability insurance covering the person's place of business. The policy must have limits of not less than the following:

(1) One hundred thousand dollars (\$100,000) for bodily injury to one (1) person.

(2) Three hundred thousand dollars (\$300,000) per accident.

(3) Fifty thousand dollars (\$50,000) for property damage.

(b) The minimum amounts must be maintained during the time the license is valid.

Sec. 7. The secretary shall use all revenues accruing to the secretary under this chapter to enforce this chapter and Indiana boat registration laws. All necessary expenses incurred and all compensation paid by the secretary for administering this chapter shall be paid out of the revenue received under this chapter and from any supplemental appropriations.

#### Chapter 8. Salvage Motor Vehicles

Sec. 1. For purposes of this chapter, "motor vehicle" does not include:

(1) an off-road vehicle; or

(2) a golf cart.

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1        **Sec. 2. (a)** Except as provided in subsection (b) and section 12 of  
 2 this chapter, this chapter applies each year to a motor vehicle,  
 3 semitrailer, or recreational vehicle manufactured within the last  
 4 seven (7) model years, including the current model year. The  
 5 bureau shall establish guidelines for determining the applicability  
 6 of the model year effective dates for each year.

7        **(b)** The bureau may extend the model years to be covered each  
 8 year by this chapter up to a maximum of fifteen (15) model years,  
 9 which includes the current model year, after doing the following:

10        **(1)** Conducting a public hearing.

11        **(2)** Giving reasonable notice to known businesses affected by  
 12 this chapter.

13        **Sec. 3. (a)** A certificate of salvage title is required for a motor  
 14 vehicle, motorcycle, semitrailer, or recreational vehicle that meets  
 15 any of the following criteria:

16        **(1)** An insurance company has determined that it is  
 17 economically impractical to repair the wrecked or damaged  
 18 motor vehicle, motorcycle, semitrailer, or recreational vehicle  
 19 and has made an agreed settlement with the insured or  
 20 claimant.

21        **(2)** If the owner of the vehicle is a business that insures its own  
 22 vehicles, the cost of repairing the wrecked or damaged motor  
 23 vehicle, motorcycle, semitrailer, or recreational vehicle  
 24 exceeds seventy percent (70%) of the fair market value  
 25 immediately before the motor vehicle, motorcycle, semitrailer,  
 26 or recreational vehicle was wrecked or damaged.

27        **(3)** The motor vehicle is a flood damaged vehicle.

28        **(b)** For the purposes of this section, the bureau shall, upon  
 29 request, determine the fair market value of a wrecked or damaged  
 30 motor vehicle, motorcycle, semitrailer, or recreational vehicle if  
 31 the fair market value cannot be determined from a source referred  
 32 to in National Automobile Dealers Association (NADA) Official  
 33 Used Car Guide, vehicle valuations determined by CCC  
 34 Information Services, Inc. (CCC), or valuations determined by  
 35 other authorities approved by the bureau.

36        **(c)** Except as described in section 11(c) of this chapter, an  
 37 insurance company shall apply for a salvage title for a vehicle that  
 38 the insurance company has determined is economically impractical  
 39 to repair.

40        **(d)** An owner described in subsection (a)(2) shall apply for a  
 41 salvage title for any vehicle that has sustained damages of seventy  
 42 percent (70%) or more of the fair market value immediately before

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the motor vehicle, motorcycle, semitrailer, or recreational vehicle was wrecked or damaged if the vehicle meets the criteria specified in subsection (a)(2).

**Sec. 4.** The bureau shall issue a certificate of salvage title as proof of ownership for a salvage motor vehicle when the acquiring insurance company, disposal facility, or person does the following:

- (1) Applies for the certificate of salvage title.
- (2) Pays the appropriate fee under IC 9-29-17.
- (3) Surrenders the motor vehicle's original certificate of title. The certificate of title must be properly notarized or include the affidavit of the last person who owned the vehicle, the person's legal representative, or legal successor in interest of the vehicle, or other acceptable proof of ownership as determined by the bureau.

**Sec. 5.** A certificate of salvage title issued under section 4 of this chapter must contain the following information:

- (1) The same vehicle information as a certificate of title issued by the bureau.
- (2) The notation "SALVAGE TITLE" prominently recorded on the front and back of the title.
- (3) If the motor vehicle is a flood damaged vehicle, the notation "FLOOD DAMAGED" prominently recorded on the front and back of the title.

**Sec. 6.** A certificate of salvage title issued under section 4 of this chapter may be assigned by the person who owns the salvage vehicle to another buyer.

**Sec. 7.** A business that is registered with the secretary as a dealer under IC 9-32-11 may reassign a certificate of salvage title one (1) time without applying to the bureau for the issuance of a new certificate of salvage title.

**Sec. 8. (a)** A dealer licensed as a dealer under IC 9-32-11 on the date of receiving a title by sale or transfer shall secure an affidavit from the person who holds the certificate of title. The affidavit must state whether the vehicle is a flood damaged vehicle.

**(b)** The dealer shall file the affidavit secured under subsection (a) with the bureau upon receiving the affidavit and shall retain a copy of the affidavit with the records of the dealer.

**(c)** The bureau shall retain an affidavit regarding flood damage to the vehicle submitted to the bureau by a dealer under this section.

**(d)** Submission of a fraudulent affidavit under subsection (a) will subject the affiant to civil liability for all damages incurred by

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a dealer subsequent purchaser or transferee of the title, including reasonable attorney's fees and court costs, including fees.

**Sec. 9.** If a salvage motor vehicle has been flood damaged, extensively burned, vandalized, or severely wrecked so that one (1) or more component parts are required to restore the motor vehicle to an operable condition, the person or business that restored the motor vehicle must furnish, on an affidavit of restoration for a salvage motor vehicle form, the name, identification number, and source of all component parts that were included in the restoration of the vehicle. The affidavit must be attached to the certificate of salvage title and be submitted to the bureau upon application by a person for a certificate of title for the vehicle.

**Sec. 10.** If a dealer purchases a salvage motor vehicle subject to section 9 of this chapter and applies for a certificate of dealer title, the affidavit attached to the certificate of salvage title must also be attached to the certificate of dealer title. The bureau must retain the affidavit or a microfilm copy of the form for ten (10) years.

**Sec. 11.** (a) Subsections (b) and (c) apply to the following persons:

(1) An insurance company that declares a wrecked or damaged motor vehicle, motorcycle, semitrailer, or recreational vehicle that meets at least one (1) of the criteria set forth in section 3(a) of this chapter and the ownership of which is not evidenced by a certificate of salvage title.

(2) An insurance company that has made and paid an agreed settlement for the loss of a stolen motor vehicle, motorcycle, semitrailer, or recreational vehicle that:

(A) has been recovered by the titled owner; and

(B) meets at least one (1) of the criteria set forth in section 9 of this chapter.

(b) A person who owns or holds a lien upon a vehicle described in subsection (a) shall assign the certificate of title to the insurance company described in subsection (a). The insurance company shall apply to the bureau within thirty-one (31) days after receipt of the certificate of title for a certificate of salvage title for each salvage or stolen vehicle subject to this chapter. The insurance company shall surrender the certificate of title to the bureau and pay the fee prescribed under IC 9-29-17 for a certificate of salvage title.

(c) When the owner of a vehicle described in subsection (a) retains possession of the vehicle:

(1) the person who possesses the certificate of title shall surrender the certificate of title to the insurance company

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described in subdivision (2);

(2) the insurance company that completes an agreed settlement for the vehicle shall:

(A) obtain the certificate of title; and

(B) submit to the bureau:

(i) the certificate of title;

(ii) the appropriate fee; and

(iii) a request for a certificate of salvage title on a form prescribed by the bureau; and

(3) after the bureau has received the items set forth in subdivision (2)(B), the bureau shall issue a certificate of salvage title to the owner.

(d) When a self-insured entity is the owner of a salvage motor vehicle, motorcycle, semitrailer, or recreational vehicle that meets at least one (1) of the criteria set forth in section 3(a) of this chapter, the self-insured entity shall apply to the bureau within thirty-one (31) days after the date of loss for a certificate of salvage title in the name of the self-insured entity's name.

(e) Any other person acquiring a wrecked or damaged motor vehicle, motorcycle, semitrailer, or recreational vehicle that meets at least one (1) of the criteria set forth in section 3(a) of this chapter, which acquisition is not evidenced by a certificate of salvage title, shall apply to the bureau within thirty-one (31) days after receipt of the certificate of title for a certificate of salvage title.

Sec. 12. (a) A scrap metal processor or other appropriate facility that purchases or acquires a salvage motor vehicle that has been totally demolished or destroyed as a result of normal processing performed by a disposal facility is not required to apply for and receive a certificate of salvage title for the vehicle.

(b) The disposal facility shall maintain the records prescribed by the secretary for a totally demolished or destroyed vehicle.

Sec. 13. (a) This section applies to all salvage motor vehicles.

(b) Whenever a salvage motor vehicle is totally demolished or destroyed by a disposal facility, scrap metal processor, or other appropriate facility, the facility or processor shall surrender the certificate of title and certificate of salvage title to the bureau.

Sec. 14. If a salvage motor vehicle is rebuilt for operation upon the highways and ownership is evidenced by an Indiana salvage title or a title from another state that designates the vehicle as salvage, the person who owns the vehicle shall apply to the bureau for a certificate of title. The bureau shall issue a certificate of title

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that lists each person who holds a lien on the vehicle to the person who owns the vehicle when the following are completed:

(1) A general inspection and the verification of the vehicle identification number of the vehicle by a state police officer or:

(A) the sheriff of;

(B) a deputy of the sheriff of; or

(C) a police officer who serves a town or city located within;

the county where the vehicle has been rebuilt. This police inspection does not indicate the worthiness of a vehicle for highway operation.

(2) Documentation including an Indiana salvage title or a title from another state that designates the vehicle as salvage and verification of proof of ownership of major component parts used and the source of the major component parts.

(3) Documentation identifying at least one (1) of the criteria set forth in section 3 of this chapter that required a salvage title.

(3) The surrender of the certificate of salvage title properly executed with an affidavit concerning the major component parts on a form prescribed by the bureau.

(4) The payment of the fee required under IC 9-32-6.

Sec. 15. (a) Except as provided in subsection (b), a certificate of title issued under section 9, 10, or 14 of this chapter and a certificate of title subsequently issued must conspicuously bear the designation:

(1) "REBUILT VEHICLE--MILEAGE UNKNOWN" if the motor vehicle is not a flood damaged vehicle; or

(2) "REBUILT FLOOD DAMAGED VEHICLE" if the motor vehicle is a flood damaged vehicle.

(b) An insurance company authorized to do business in Indiana may obtain a certificate of title that does not bear the designation if the company submits to the bureau, in the form and manner the bureau requires, satisfactory evidence that the damage to a recovered stolen motor vehicle did not meet the criteria set forth in section 3 of this chapter.

(c) An affidavit submitted under section 9 or 10 of this chapter must conspicuously bear the designation:

(1) "REBUILT VEHICLE--MILEAGE UNKNOWN" if the motor vehicle is not a flood damaged vehicle; or

(2) "REBUILT FLOOD DAMAGED VEHICLE" if the motor

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vehicle is a flood damaged vehicle.

Sec. 16. (a) Except as provided in subsection (b), whenever a certificate of title is issued for a motor vehicle that was previously titled in another state or jurisdiction and the certificate of title from the other state or jurisdiction contains a "REBUILT", "RECONSTRUCTED", "RECONDITIONED", "DISTRESSED VEHICLE", or similar designation, a new and subsequent certificate of title must conspicuously bear the designation "REBUILT VEHICLE".

(b) Whenever a certificate of title is issued for a motor vehicle described in subsection (a) that was previously titled in another state or jurisdiction and the certificate of title from the other state or jurisdiction contains a designation that indicates that the motor vehicle is a flood damaged vehicle, a new and subsequent certificate of title must conspicuously bear the designation "REBUILT FLOOD DAMAGED VEHICLE".

Sec. 17. A vehicle that has been designated "JUNK" in another state or jurisdiction may not be titled in Indiana.

Sec. 18. (a) The secretary shall prescribe record keeping forms to be used by:

- (1) a disposal facility;
- (2) an automotive salvage rebuilder; and
- (3) a used parts dealer licensed under IC 9-32-9;

to preserve information about salvage vehicles or major component parts acquired or sold by the business.

(b) The record keeping forms required under subsection (a) must contain the following information:

- (1) For each new or used vehicle acquired or disposed of or for the major component parts of a new or used vehicle, the following:

- (A) A description of the vehicle or major component part, including numbers or other marks identifying the vehicle or major component part.

- (B) The date the vehicle or major component part was acquired and disposed of.

- (C) The name and address of the person from whom the vehicle or major component part was acquired.

- (D) Verification of the purchaser of the vehicle or major component part by driver's license, state identification card, or other reliable means.

- (E) The name and address and, if applicable, the dealer number of the disposal facility, salvage rebuilder, hulk

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crusher, or scrap metal processor who acquires the motor vehicle or major component part.

(2) For motor vehicles acquired or disposed of, in addition to the information required by subdivision (1), the following:

(A) The vehicle's trade name.

(B) The vehicle's manufacturer.

(C) The vehicle's type.

(D) The model year and vehicle identification number.

(E) A statement of whether any number has been defaced, destroyed, or changed.

(3) For wrecked, dismantled, or rebuilt vehicles, the date the vehicle was dismantled or rebuilt.

(c) Separate records for each vehicle or major component part must be maintained.

(d) The record keeping requirements of this section do not apply to hulk crushers or to scrap metal processors when purchasing scrap from a person who is licensed under IC 9-32-9 and who is required to keep records under this section.

Sec. 19. Unless otherwise specified or required, the records required under section 18 of this chapter shall be retained for a period of five (5) years from the date the vehicle or major component part was acquired, in the form prescribed by the secretary.

Sec. 20. The records required under section 18 of this chapter must be available to and produced at the request of a police officer (as defined in IC 9-13-2-127(a)(1) through IC 9-13-2-127(a)(4)) or an authorized agent of the secretary.

Sec. 21. (a) This section applies to vehicles and their component parts that are in either their current model year or in the immediately preceding ten (10) model years when purchased by a disposal facility or automotive salvage rebuilder.

(b) A disposal facility and automotive salvage rebuilder licensed under IC 9-32-9 must complete the record keeping forms developed under section 18 of this chapter for the purchase of a salvage motor vehicle or major component part.

Sec. 22. A record required to be maintained under this chapter is subject to inspection by a police officer (as defined in IC 9-13-2-127(a)(1) through IC 9-13-2-127(a)(4)) or agent of the secretary during normal business hours. In addition to the inspections authorized under section 23 of this chapter, an inspection under this section may include an examination of the premises of the licensee's established place of business for the

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purpose of determining the accuracy of the required records.

Sec. 23. The secretary, a police officer (as defined in IC 9-13-2-127(a)(1) through IC 9-13-2-127(a)(4)) or an agent of the secretary or a police officer may enter upon the premises of a disposal facility, insurance company, or other business dealing in salvage vehicles during normal business hours to inspect a motor vehicle, semitrailer, recreational vehicle, major component part, records, certificate of title, and other ownership documents to determine compliance with this chapter.

Sec. 24. In the absence of fraud or bad faith, a person who releases or provides evidence or information under this chapter to any of the following is immune from civil or criminal liability for providing that evidence or information:

- (1) The superintendent of the state police or the superintendent's designee.
- (2) The attorney general or the attorney general's designee.
- (3) The city police chief or the city police chief's designee.
- (4) The county sheriff or the county sheriff's designee.
- (5) The prosecuting attorney or the prosecuting attorney's designee responsible for prosecutions in the county that has jurisdiction of the auto theft.
- (6) The secretary or an agent of the secretary.

Sec. 25. (a) A court may issue a warrant to search the premises of an automotive salvage rebuilder, an automotive salvage recycler, a disposal facility, or a used parts dealer for any major component parts being possessed, kept, sold, bartered, given away, used, or transported in violation of this chapter.

(b) A warrant issued under subsection (a) shall be directed to a police officer who has the power of criminal process. The person to whom the warrant was issued shall serve the warrant and make the return within twenty (20) days after the date of issue.

(c) The police officer who serves a warrant issued under subsection (a) shall seize any article described in the warrant and any other article the police officer finds during the search that is held in violation of this chapter. The police officer shall hold the articles pending the disposition ordered by the court in which a prosecution may be instituted for a violation of this chapter.

(d) A major component part seized under subsection (c) and any other article found on the searched premises and taken under a warrant issued under subsection (a) may not be taken from the custody of the person who served the warrant by a writ of replevin or other process while proceedings are pending.

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**Sec. 26. A seller that is:**

**(1) a dealer; or**

**(2) any other person who sells, exchanges, or transfers at least five (5) vehicles each year;**

**may not sell, exchange, or transfer a rebuilt vehicle without disclosing in writing to the purchaser, customer, or transferee before consummating the sale, exchange, or transfer the fact that the vehicle is a rebuilt vehicle if the dealer or other person knows or should reasonably know the vehicle is a rebuilt vehicle.**

**Sec. 27. A person may not knowingly possess, buy, sell, exchange, give away, or offer to buy, sell, exchange, or give away a manufacturer's identification plate or serial plate that has been removed from a motor vehicle, motorcycle, semitrailer, or recreational vehicle that is a total loss or salvage.**

**Sec. 28. The prosecution of a disposal facility, automotive salvage rebuilder, insurance company, or individual suspected of having violated this section may be instituted by the filing of an information or indictment in the same manner as other criminal cases are commenced.**

**Sec. 29. A person aggrieved by a violation of this chapter may recover the actual damages sustained, together with costs and reasonable attorney's fees. In the court's discretion the court may increase the award of damages to:**

**(1) an amount not to exceed three (3) times the actual damages sustained; or**

**(2) two thousand five hundred dollars (\$2,500).**

**Sec. 30. In addition to any applicable criminal penalty, a person who violates this chapter commits a deceptive act that is actionable by the attorney general and is subject to the remedies and penalties under IC 24-5-0.5.**

**Chapter 9. Licensing of Vehicle Salvaging**

**Sec. 1. A disposal facility, a used parts dealer, or an automotive salvage rebuilder must be licensed by the secretary under this chapter before the facility, dealer, or rebuilder may do any of the following:**

**(1) Sell a used major component part of a vehicle.**

**(2) Wreck or dismantle a vehicle for resale of the major component parts of the vehicle.**

**(3) Rebuild a wrecked or dismantled vehicle.**

**(4) Possess more than two (2) inoperable vehicles subject to registration for more than thirty (30) days.**

**(5) Engage in the business of storing, disposing, salvaging, or**

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recycling of vehicles, vehicle hulks, or the parts of vehicles.

**Sec. 2.** A disposal facility, a used parts dealer, or an automotive salvage rebuilder licensed in Indiana must have a principal place of business in Indiana conducting the business that is the basis for the license. A place of business that performs only ministerial tasks is not considered to be conducting business.

**Sec. 3.** To apply for a license under this chapter, a disposal facility, a used parts dealer, or an automotive salvage rebuilder must submit the following to the secretary:

(1) A completed application, which must be verified by the secretary.

(2) The licensing fee under IC 9-29-17-9.

**Sec. 4.** The secretary shall prescribe an application form to be used by persons applying for a license under this chapter. The application must include the following information:

(1) The applicant's name.

(2) The applicant's type of business organization and the following as appropriate:

(A) If the applicant is a corporation, the name and address of each officer and director of the corporation.

(B) If the applicant is a sole proprietorship, the name and address of the sole proprietor.

(C) If the applicant is a partnership, the name and address of each partner.

(D) If the applicant is an unincorporated association or similar form of business organization, the name and address of each member, trustee, or manager.

(3) The applicant's principal place of business.

(4) The types of activities set out in section 1 of this chapter that the applicant proposes to conduct.

**Sec. 5.** Each license under this chapter, except an initial license, shall be issued for a twelve (12) month period beginning March 1 and expiring the last day of February of each year. An initial license may be issued for a period of less than twelve (12) months, but the license must expire on the last day of February immediately following the date the license is issued.

**Sec. 6.** Within a reasonable time, the secretary shall do the following:

(1) Review all license applications submitted under this chapter.

(2) Approve a submitted license application unless any of the following apply:

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(A) The application does not conform with this chapter.

(B) The applicant has made a material fact misrepresentation on the application.

(C) The applicant has been convicted of committing a fraudulent act in connection with one (1) of the activities specified in section 1 of this chapter.

**Sec. 7.** A person denied a license under section 6 of this chapter is entitled to a hearing under IC 9-32-16.

**Sec. 8.** If the secretary approves a license application under this chapter, the secretary shall grant the applicant:

(1) an original license for the applicant's principal place of business; and

(2) a supplemental license for each other place of business listed on the application.

**Sec. 9.** The secretary shall prescribe the form of the licenses granted under section 8 of this chapter. A license granted under section 8 of this chapter must include the following information:

(1) The licensee's name.

(2) The licensee's type of business organization and the following as appropriate:

(A) If a corporation, the name and address of each officer.

(B) If a sole proprietorship, the name and address of the proprietor.

(C) If a partnership, the name and address of each managing partner.

(D) If an unincorporated association or similar form of business organization, the name and address of the manager or other chief administrative official.

(3) The licensee's principal place of business.

(4) A listing of the types of business activities specified in section 1 of this chapter that the licensee may conduct.

(5) The date the license expires.

**Sec. 10.** The licensee shall post a license granted to the licensee under this chapter in a conspicuous place at the licensed place of business.

**Sec. 11.** If the secretary receives a written complaint from a local zoning body that a disposal facility or automotive salvage rebuilder subject to this chapter is operating in violation of a local zoning ordinance, the secretary shall delay the issuance or renewal of the facility's or rebuilder's license under this chapter until the local zoning complaints have been satisfied.

**Chapter 10. Motor Vehicle Sales Advisory Board**

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1       **Sec. 1. The motor vehicle sales advisory board is established to**  
 2       **advise the secretary in the administration of this article.**

3       **Sec. 2. (a) The advisory board is composed of the secretary and**  
 4       **eight (8) persons appointed by the governor upon the**  
 5       **recommendation of the secretary as follows:**

6               **(1) Two (2) of the appointed members must be franchised new**  
 7               **motor vehicle dealers as follows:**

8                   **(A) One (1) member must have sold fewer than seven**  
 9                   **hundred fifty (750) new motor vehicles in the year before**  
 10                  **the member's appointment.**

11                  **(B) One (1) member must have sold more than seven**  
 12                  **hundred forty-nine (749) new motor vehicles in the year**  
 13                  **before the member's appointment.**

14               **(2) Two (2) of the appointed members must represent the**  
 15               **automobile manufacturing industry, and each must have been**  
 16               **an Indiana resident for at least two (2) years immediately**  
 17               **preceding the member's appointment.**

18               **(3) Two (2) of the appointed members must represent the**  
 19               **general public and may not have any direct interest in the**  
 20               **manufacture or sale of motor vehicles.**

21               **(4) One (1) member must represent used motor vehicle**  
 22               **dealers that are not franchised new motor vehicle dealers.**

23               **(5) One (1) member must represent used motor vehicle**  
 24               **auctioneers.**

25               **(b) Not more than four (4) members of the advisory board may**  
 26               **be of the same political party.**

27       **Sec. 3. (a) A member appointed to the advisory board under**  
 28       **section 2 of this chapter serves a three (3) year term. A person may**  
 29       **not serve more than two (2) consecutive full terms. Each appointed**  
 30       **member serves until the member's successor is appointed and**  
 31       **qualified.**

32               **(b) A member may be removed for good cause.**

33               **(c) A vacancy shall be filled by appointment of the governor for**  
 34               **the unexpired term.**

35       **Sec. 4. Members of the advisory board are entitled to receive the**  
 36       **expenses and per diem allowed by law. Membership on the**  
 37       **advisory board does not constitute the holding of a public office.**

38       **Sec. 5. The secretary shall serve as chairman of the advisory**  
 39       **board. The advisory board shall elect a vice chairman and**  
 40       **secretary from the appointed members during the first month of**  
 41       **each year. The vice chairman and secretary serve until their**  
 42       **successors are appointed and qualified and may be removed for**

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1 good cause.

2 Sec. 6. The advisory board shall meet during the first month of  
3 each year. Additional meetings may be convened at the call of the  
4 secretary or the written request of any three (3) members.

5 Sec. 7. Five (5) members of the advisory board constitute a  
6 quorum for doing business. The majority vote of the members of  
7 the quorum, present and voting, is required for the passage of a  
8 matter put to a vote of the advisory board.

9 Sec. 8. The advisory board is vested with the following powers:

10 (1) To consult with and advise the secretary.

11 (2) To suggest rules, including the following:

12 (A) The contents of forms.

13 (B) Methods and procedures for the investigation and  
14 evaluation of the qualifications of applicants for licenses.

15 (C) The criteria upon which to issue, deny, suspend, and  
16 revoke licenses.

17 (D) Procedures for the investigation into and conduct of  
18 hearings on unfair practices.

19 Chapter 11. Regulation of Vehicle Merchandising

20 Sec. 1. (a) The following persons must be licensed under this  
21 article to engage in the business of buying or selling motor vehicles  
22 or semitrailers:

23 (1) An automobile auctioneer.

24 (2) A converter manufacturer.

25 (3) A dealer.

26 (4) A distributor.

27 (5) A distributor representative.

28 (6) A factory branch.

29 (7) A factory representative.

30 (8) A manufacturer.

31 (9) A transfer dealer.

32 (10) A wholesale dealer.

33 (11) An automotive mobility dealer.

34 (b) An automotive mobility dealer who engages in the business  
35 of:

36 (1) selling, installing, or servicing;

37 (2) offering to sell, install, or service; or

38 (3) soliciting or advertising the sale, installation, or servicing  
39 of;

40 equipment or modifications specifically designed to facilitate use  
41 or operation of a vehicle by an individual who is disabled or aged  
42 must be licensed under this article.

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1       **Sec. 2. (a) A person shall register as a dealer sales agent by filing**  
 2       **an application and paying the fee established in IC 9-29-17-13. The**  
 3       **application must contain the information or record required for**  
 4       **the filing of a uniform application.**

5       **(b) If the information or record contained in an application filed**  
 6       **under subsection (a) is or becomes inaccurate or incomplete with**  
 7       **regards to a material fact, the applicant or registrant shall, not**  
 8       **later than ten (10) days after the information becomes inaccurate**  
 9       **or incomplete, file a correcting amendment. A correcting**  
 10       **amendment must be mailed to the division through certified mail**  
 11       **with a return receipt requested.**

12       **(c) Service of any notice or process from the secretary is**  
 13       **considered effective if mailed by certified mail, return receipt**  
 14       **requested, to the home address supplied by the applicant on the**  
 15       **application.**

16       **(d) If an order is not in effect or a proceeding is not pending**  
 17       **under this article, registration becomes effective at noon thirty (30)**  
 18       **days after a completed application is filed, unless the registration**  
 19       **is denied. A rule adopted or order issued under this article may set**  
 20       **an earlier effective date or may defer the effective date until noon**  
 21       **forty-five (45) days after the filing of any amendment completing**  
 22       **the application.**

23       **(e) A registration is effective until surrendered by the dealer**  
 24       **sales agent or revoked or suspended by order of the secretary.**

25       **Sec. 3. (a) An application for a license under this chapter must:**

- 26       **(1) be accompanied by the fee required under IC 9-29-17;**
- 27       **(2) be on a form prescribed by the secretary;**
- 28       **(3) contain the information the secretary considers necessary**  
 29       **to enable the secretary to determine fully:**

30       **(A) the qualifications and eligibility of the applicant to**  
 31       **receive the license;**

32       **(B) the location of each of the applicant's places of business**  
 33       **in Indiana; and**

34       **(C) the ability of the applicant to conduct properly the**  
 35       **business for which the application is submitted; and**

- 36       **(4) contain evidence of a bond required in subsection (e).**

37       **(b) An application for a license as a dealer must show whether**  
 38       **the applicant proposes to sell new or used motor vehicles, or both.**

39       **(c) An applicant who proposes to use the Internet or another**  
 40       **computer network in aid of its sale of motor vehicles to consumers**  
 41       **in Indiana shall, if the applicant's activities may result in the**  
 42       **creation of business records outside Indiana, provide the division**

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with the name, address, and telephone number of the person who has control of those business records. The secretary may not issue a license to a dealer who transacts business in this manner and does not have an established place of business in Indiana.

(d) This subsection applies to an application for a license as a dealer in a city having a population of more than ninety thousand (90,000) but less than one hundred five thousand (105,000). The application must include an affidavit from:

- (1) the person charged with enforcing a zoning ordinance described in this subsection; or
- (2) the zoning enforcement officer under IC 36-7-4, if one exists;

who has jurisdiction over the real property where the applicant wants to operate as a dealer. The affidavit must state that the proposed location is zoned for the operation of a dealer's establishment. The applicant may file the affidavit at any time after the filing of the application. However, the secretary may not issue a license until the applicant files the affidavit.

(e) This subsection does not apply to a person listed in the categories set forth in section 1(a)(10) through 1(a)(11) of this chapter that was licensed under this chapter before July 1, 2009. Except as provided in subsection (g), a licensee shall maintain a bond satisfactory to the secretary in the amount of twenty-five thousand dollars (\$25,000), which must:

- (1) be in favor of the state; and
- (2) secure payment of fines, penalties, costs, and fees assessed by the secretary after notice, opportunity for a hearing, and opportunity for judicial review, in addition to securing the payment of damages to a person aggrieved by a violation of this chapter by the licensee after a judgment has been issued.

(f) Service under this chapter shall be made in accordance with the Indiana Rules of Trial Procedure.

(g) Instead of meeting the requirement in subsection (e), a licensee may submit to the secretary evidence that the licensee is a member of a risk retention group regulated by the Indiana department of insurance.

**Sec. 4.** A manufacturer, distributor, factory branch, or dealer proposing to sell new motor vehicles shall file and maintain with the secretary:

- (1) a current copy of each franchise to which the person is a party; or
- (2) if the person is a party to multiple franchises that are

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identical except for stated items, a copy of the form franchise with supplemental schedules of variations from the form.

**Sec. 5. (a) The license issued to a factory branch, an automobile auctioneer, a transfer dealer, or a dealer under this chapter:**

**(1) must specify the location of each place of business; and**

**(2) shall be conspicuously displayed at each business location.**

**(b) If a licensee's business name or location is changed, the licensee shall notify the secretary not later than ten (10) days after the change and remit the fee required under IC 9-29-17. The secretary shall endorse the change on the license if the secretary determines that the change is not subject to other provisions of this article.**

**(c) A dealer who uses the Internet or another computer network to facilitate the sale of motor vehicles as set forth in section 3(c) of this chapter shall notify the secretary not later than ten (10) days after any change in a name, address, or telephone number documented in business records located outside Indiana that have been created in transactions made in Indiana by the dealer. A report made under this subsection is not subject to the fee required under IC 9-29-17.**

**(d) A dealer who wants to change a location must submit to the secretary an application for approval of the change. The application must be accompanied by an affidavit from:**

**(1) the person charged with enforcing a zoning ordinance described in this subsection; or**

**(2) the zoning enforcement officer under IC 36-7-4, if one exists;**

**who has jurisdiction over the real property where the applicant wants to operate as a dealer. The affidavit must state that the proposed location is zoned for the operation of a dealer's establishment. The secretary may not approve a change of location or endorse a change of location on the dealer's license until the dealer provides the affidavit.**

**(e) For the purpose of this section, an offsite license issued under section 10 of this chapter does not constitute a change of location.**

**Sec. 6. A license issued to a factory representative or distributor representative must state the name of the representative's employer. Within ten (10) days after a change of employer, the licensee shall mail the license to the secretary and indicate the name and address of the licensee's new employer. The secretary shall endorse the change on the license and return the license to the licensee in care of the new employer of the licensee. A factory**

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representative, distributor representative, or wholesale dealer must have a license when engaged in business and shall display the license upon request. A temporary license for a factory representative or distributor representative may be issued for a period up to one hundred twenty (120) days pending investigation by the secretary of the representative's qualification for a license.

Sec. 7. The secretary shall, by rule adopted under IC 4-22-2, establish requirements for an initial application for and renewal of an automotive mobility dealer's license. The rules must include a requirement that each initial or renewal application for an automotive mobility dealer's license include proof that the applicant is accredited through the Quality Assurance Program of the National Mobility Equipment Dealers Association.

Sec. 8. An automotive mobility dealer licensed under this chapter is entitled to:

- (1) display;
  - (2) inventory;
  - (3) advertise;
  - (4) offer for sale; or
  - (5) do any combination of subdivisions (1) through (4) concerning;
- any adapted vehicle.

Sec. 9. This section does not apply to sales made at a motor vehicle industry sponsored trade show. A dealer may not sell or offer to sell a vehicle at a location away from the dealer's established place of business without obtaining an offsite sales license under section 10 of this chapter.

Sec. 10. (a) Except as provided in subsections (b) through (g), the secretary shall issue an offsite sales license to a dealer licensed under this chapter who submits an application for the license not later than ten (10) business days or two (2) calendar weeks before the offsite sale date. License applications under this section shall be made public upon the request of any person.

(b) The secretary may not issue an offsite sales license to a dealer who does not have an established place of business within Indiana.

(c) This subsection does not apply to:

- (1) new manufactured housing dealers;
- (2) recreational vehicle dealers;
- (3) a rental company that is a dealer conducting a sale at a site within twenty (20) miles of any of its company owned affiliates; or

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**(4) off-road vehicle dealers.**

The secretary may not issue an offsite sales license to a licensed dealer proposing to conduct a sale outside a radius of twenty (20) miles from the established place of business of the licensed dealer.

(d) A vehicle display is not considered an offsite sale if it is conducted by a new vehicle franchised dealer in an open area where no sales personnel and no sales material are present.

(e) The secretary may not issue an offsite sales license to a licensed dealer proposing to conduct an offsite sale for more than ten (10) calendar days.

(f) As used in this subsection, "executive" has the meaning set forth in IC 36-1-2-5. The secretary may not issue an offsite sales license to a licensed dealer if the dealer does not have certification that the offsite sale would be in compliance with local zoning ordinances or other local ordinances. Authorization under this subsection may be obtained only from the following:

(1) If the offsite sale would be located within the corporate boundaries of a city or town, the executive of the city or town.

(2) If the offsite sale would be located outside the corporate boundaries of a city or town:

(A) except as provided in clause (B), the executive of the county; or

(B) if the city or town exercises zoning jurisdiction under IC 36-7-4-205(b) over the area where the offsite sale would be located, the executive of the city or town.

(g) The secretary may not issue an offsite sales license to a licensed dealer who has held more than three (3) nonconsecutive offsite sales in the year ending on the date of the offsite sale for which the license application is being submitted.

(h) Section 3(c) of this chapter does not apply to the application or issuance of an offsite sales license under this section.

**Sec. 11.** A license issued under this chapter is valid for a one (1) year period in accordance with the following schedule:

(1) A person whose business name begins with the letters A through B, inclusive, shall register before March 1 of each year.

(2) A person whose business name begins with the letters C through D, inclusive, shall register before April 1 of each year.

(3) A person whose business name begins with the letters E through G, inclusive, shall register before May 1 of each year.

(4) A person whose business name begins with the letters H through I, inclusive, shall register before June 1 of each year.

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(5) A person whose business name begins with the letters J through L, inclusive, shall register before July 1 of each year.

(6) A person whose business name begins with the letters M through O, inclusive, shall register before August 1 of each year.

(7) A person whose business name begins with the letters P through R, inclusive, shall register before September 1 of each year.

(8) A person whose business name begins with the letters S through T, inclusive, shall register before October 1 of each year.

(9) A person whose business name begins with the letters U through Z, inclusive, shall register before November 1 of each year.

A sole proprietor shall register based upon the name of the sole proprietorship.

Sec. 12. A person licensed under this article may transfer or assign a title for a motor vehicle.

Sec. 13. (a) A person licensed under this article shall furnish evidence that the person has liability insurance or garage liability insurance covering the person's place of business. The policy must have limits of not less than the following:

(1) One hundred thousand dollars (\$100,000) for bodily injury to one (1) person.

(2) Three hundred thousand dollars (\$300,000) for bodily injury for each accident.

(3) Fifty thousand dollars (\$50,000) for property damage.

(b) The minimum amounts required by subsection (a) must be maintained during the time the license is valid.

Sec. 14. (a) A person who ceases a business activity for which a license was issued under this chapter shall do the following:

(1) Notify the secretary of the date that the business activity will cease.

(2) Deliver to the secretary all permanent dealer license plates and interim license plates issued to the person not later than ten (10) days before the date the business activity will cease.

(b) A dealer may not transfer or sell the:

(1) dealer's license; or

(2) use of the dealer's license.

(c) A dealer that changes its form of organization or state of incorporation may continue the dealer's licensure by filing an amendment to the registration if the change does not involve a

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1 material fact in the financial condition or management of the  
 2 dealer. The amendment becomes effective when filed or on the date  
 3 designated by the registrant in its filing. The new organization is a  
 4 successor to the original registrant for the purposes of this article.

5 (d) If there is a change in the dealer's ownership, the successive  
 6 owner shall file a new application for a license under this chapter.

7 Sec. 15. Except as provided in IC 9-29-17, all revenues accruing  
 8 to the secretary under this chapter shall be deposited in the motor  
 9 vehicle highway account.

10 Sec. 16. A dealer who sells a motor vehicle through the use of  
 11 the Internet or another computer network shall deliver the motor  
 12 vehicle to the customer at the place of business of the dealer in  
 13 Indiana.

14 Sec. 17. (a) A person licensed under this article shall be issued  
 15 a special event permit from the secretary for a special event  
 16 meeting the following conditions:

17 (1) The event is a vehicle auction conducted by auctioneers  
 18 licensed under IC 25-6.1-3.

19 (2) The vehicles to be auctioned are:

20 (A) at least fifteen (15) years old; or

21 (B) classified as classic, collector, or antique vehicles under  
 22 rules adopted by the secretary.

23 (3) At least one hundred (100) vehicles will be auctioned  
 24 during the special event.

25 (4) The licensee submits to the secretary an application for a  
 26 special event permit not later than thirty (30) days before the  
 27 beginning date of the special event.

28 (5) The application under subdivision (4) is accompanied by  
 29 the permit fee required under IC 9-29-17-16.

30 (b) Not more than two (2) special event permits may be issued  
 31 by the secretary to the same applicant within a twelve (12) month  
 32 period.

33 Sec. 18. (a) A person may not sell or offer for sale a vehicle for  
 34 or on behalf of a dealer in this state unless the person is registered  
 35 under this article as a dealer sales agent.

36 (b) A dealer, directly or indirectly, may not employ, in  
 37 connection with vehicle sales in Indiana, a dealer sales agent if:

38 (1) the dealer sales agent is unregistered;

39 (2) the registration of the dealer sales agent has been  
 40 suspended or revoked; or

41 (3) the dealer sales agent is barred from employment or  
 42 association with a dealer by an order of the secretary.

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(c) Upon request from a dealer and for good cause, an order under this article may modify or waive, in whole or in part, the application of the prohibition of this section to the dealer.

#### **Chapter 12. Disclosures Required in Motor Vehicle Leases**

##### **Sec. 1. A retail lessor shall do the following:**

(1) Comply with the requirements of Regulation M (12 CFR 213) for disclosure of gross capitalized cost, capitalized cost reduction, and adjusted capitalized cost adopted under the federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

(2) Disclose to a retail lessee in a separate blocked section in a lease agreement, in capital letters in at least 10 point bold type the following:

**THIS IS A LEASE AGREEMENT.**

**THIS IS NOT A PURCHASE AGREEMENT.**

**PLEASE REVIEW THESE MATTERS CAREFULLY AND SEEK INDEPENDENT PROFESSIONAL ADVICE IF YOU HAVE ANY QUESTIONS CONCERNING THIS TRANSACTION. YOU ARE ENTITLED TO AN EXACT COPY OF THE AGREEMENT YOU SIGN.**

(3) Provide the retail lessee with a copy of each document signed by the retail lessee during the course of the lease transaction.

**Sec. 2. A trade-in vehicle used, in whole or in part, to pay amounts due at lease signing or delivery of the vehicle must be identified as a trade-in vehicle in the lease agreement and identified by year, make, and model. The lease agreement must state the net credit of the trade-in vehicle used to pay amounts due at lease signing or delivery of the vehicle.**

**Sec. 3. A bona fide printing error identified on the face of the lease agreement does not constitute a violation of this chapter.**

**Sec. 4. (a) A retail lessor who fails to comply with the requirements of this chapter is liable to the retail lessee for:**

(1) actual damages sustained;

(2) a civil penalty of not more than one thousand dollars (\$1,000) per lease transaction; and

(3) reasonable attorney's fees and costs.

(b) In addition to any other remedies provided by law, a retail lessee may bring an action in circuit court to recover the damages, penalties, and fees described in subsection (a).

(c) The total recovery of damages, penalties, and fees in a class action civil suit brought under this section may not exceed one hundred thousand dollars (\$100,000).

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1        **Sec. 5.** A civil suit described under section 4 of this chapter may  
 2 be brought on behalf of a consumer by the attorney general.

3        **Sec. 6.** An action authorized by sections 4 and 5 of this chapter  
 4 must be brought not later than three (3) years after the date the  
 5 lease agreement is signed.

6        **Chapter 13. Unfair Practices**

7        **Sec. 1.** It is an unfair practice for a dealer to require a  
 8 purchaser of a motor vehicle, as a condition of sale and delivery of  
 9 the motor vehicle, to purchase any equipment, part, or accessory  
 10 not ordered by the purchaser unless the equipment, part, or  
 11 accessory is:

12            (1) already installed on the motor vehicle when the motor  
 13 vehicle is received by or offered for sale by the dealer; or

14            (2) required by law.

15        **Sec. 2.** It is an unfair practice for a dealer to fail to perform the  
 16 obligations imposed on the dealer in connection with the delivery  
 17 and preparation of a new motor vehicle for retail sale as provided  
 18 in the preparation and delivery agreement of the manufacturer or  
 19 distributor applicable to the motor vehicle.

20        **Sec. 3.** It is an unfair practice for a dealer to fail to perform the  
 21 obligations imposed on the dealer in connection with the warranty  
 22 agreement of the manufacturer or distributor applicable to any  
 23 motor vehicle sold by the dealer.

24        **Sec. 4.** It is an unfair practice for a dealer to sell a new motor  
 25 vehicle having a trade name, trade or service mark, or related  
 26 characteristic for which the dealer does not have a franchise in  
 27 effect at the time of the sale. However, a vehicle having more than  
 28 one (1) trade name, service mark, or related characteristic as a  
 29 result of modification or further manufacture by a manufacturer,  
 30 converter manufacturer, or an automotive mobility dealer licensed  
 31 under this article may be sold by a franchisee appointed by that  
 32 manufacturer, converter manufacturer, or automotive mobility  
 33 dealer.

34        **Sec. 5.** It is an unfair practice for a dealer to fail to perform the  
 35 fiduciary duty imposed on the dealer by IC 6-2.5-2-1 with regard  
 36 to the collection and remittance of the state gross retail tax. Willful  
 37 violation of the fiduciary duty includes written or oral agreements  
 38 between a dealer and a prospective purchaser that would give the  
 39 appearance that a bona fide trade-in has taken place, when in fact  
 40 the purpose of the agreement is to reduce the prospective  
 41 purchaser's state gross retail tax and thereby deprive the state of  
 42 revenue.

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1       **Sec. 6. It is an unfair practice for a dealer to sell, exchange, or**  
 2 **transfer a rebuilt vehicle without disclosing in writing to the**  
 3 **purchaser, customer, or transferee the fact that the vehicle is a**  
 4 **rebuilt vehicle if the dealer knows or should reasonably know**  
 5 **before consummating the sale, exchange, or transfer that the**  
 6 **vehicle is a rebuilt vehicle**

7       **Sec. 7. (a) It is an unfair practice for a dealer to require a**  
 8 **purchaser of a motor vehicle as a condition of the sale and delivery**  
 9 **of the motor vehicle to pay a document preparation fee, unless the**  
 10 **fee:**

- 11       (1) reflects expenses actually incurred for the preparation of
- 12       documents;
- 13       (2) was affirmatively disclosed by the dealer;
- 14       (3) was negotiated by the dealer and the purchaser;
- 15       (4) is not for the preparation, handling, or service of
- 16       documents that are incidental to the extension of credit; and
- 17       (5) is set forth on a buyer's order or similar agreement by a
- 18       means other than preprinting.

19       **(b) The maximum allowable charge for a document preparation**  
 20 **fee is one hundred fifty dollars (\$150).**

21       **Sec. 8. (a) It is an unfair practice for a manufacturer or**  
 22 **distributor to violate IC 23-2-2.7.**

23       **(b) It is an unfair practice for a manufacturer or distributor to**  
 24 **enter into an agreement in which a dealer is required to waive the**  
 25 **provisions of:**

- 26       (1) this chapter; or
- 27       (2) IC 23-2-2.7.

28       **However, this subsection does not apply to a voluntary agreement**  
 29 **in which separate consideration is offered and accepted.**

30       **Sec. 9. It is an unfair practice for a manufacturer or distributor**  
 31 **to coerce a dealer to order parts, accessories, equipment,**  
 32 **machinery, tools, appliances, or any other commodity from a**  
 33 **person.**

34       **Sec. 10. It is an unfair practice for a manufacturer or**  
 35 **distributor to prevent or require, or attempt to prevent or require,**  
 36 **by contract or otherwise, a change in the capital structure of a**  
 37 **dealer or the means by or through which the dealer finances the**  
 38 **dealer's operation, if the dealer at all times meets reasonable**  
 39 **capital standards agreed to by the dealer and the manufacturer or**  
 40 **distributor. A change in capital structure does not cause a change**  
 41 **in the principal management or have the effect of a sale of the**  
 42 **franchise without the consent of the manufacturer or distributor.**

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1       Sec. 11. It is an unfair practice for a manufacturer or  
 2 distributor to prevent or require, or attempt to prevent or require,  
 3 a dealer to change the dealer's executive management, other than  
 4 the principal dealer operator or operators, if the franchise was  
 5 granted in reliance upon the personal qualifications of the  
 6 principal dealer operator or operators.

7       Sec. 12. It is an unfair practice for a manufacturer or  
 8 distributor to prevent or require, or attempt to prevent or require,  
 9 by contract or otherwise, a dealer or an officer, a partner, or a  
 10 stockholder of a dealer to sell or transfer a part of the interest of  
 11 the officer, partner, or stockholder to any other person. A dealer,  
 12 an officer, a partner, or a stockholder may not sell, transfer, or  
 13 assign the franchise or a right under the franchise without the  
 14 consent of the manufacturer or distributor, which consent may not  
 15 be withheld unreasonably.

16       Sec. 13. It is an unfair practice for a manufacturer or  
 17 distributor to prevent or attempt to prevent a dealer from  
 18 receiving fair and reasonable compensation for the value of the  
 19 franchised business as a going concern. The dealer may not  
 20 transfer or assign the dealer's franchise without the consent of the  
 21 manufacturer or distributor, and the manufacturer or distributor  
 22 may not unreasonably withhold consent.

23       Sec. 14. It is an unfair practice for a manufacturer or  
 24 distributor to employ a person as a representative who has not  
 25 been licensed under this article.

26       Sec. 15. (a) It is an unfair practice for a manufacturer or  
 27 distributor to fail to compensate to a dealer the contracted labor  
 28 rate for the work and services the dealer is required to perform in  
 29 connection with the dealer's delivery and preparation obligations  
 30 under any franchise or fail to compensate to a dealer the  
 31 contracted hourly labor rate for labor and other expenses incurred  
 32 by the dealer under the manufacturer's warranty agreements.

33       (b) This section does not authorize a manufacturer or  
 34 distributor and its franchisees in Indiana to establish a uniform  
 35 hourly labor reimbursement rate effective for the entire state.

36       Sec. 16. (a) A manufacturer or distributor and at least thirty  
 37 percent (30%) of its franchisees in Indiana of the same line make  
 38 may agree in an express written contract citing this section to a  
 39 uniform warranty reimbursement policy to be used by franchisees  
 40 for the performance of warranty repairs. The contract must  
 41 include reimbursement for parts used in warranty repairs or the  
 42 use of a uniform time standards manual, or both. The allowance

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for diagnosis within the uniform time standards manual must be reasonable and adequate for the work and service to be performed.

The manufacturer or distributor:

(1) may have only one (1) agreement with regard to each line make; and

(2) shall have a reasonable and fair procedure for franchisees to request a modification or adjustment of a standard included in the uniform time standards manual.

(b) A contract described in subsection (a) must meet the following criteria:

(1) Establish a uniform parts reimbursement rate that must be greater than the manufacturer's or distributor's nationally established parts reimbursement rate in effect at the time the contract becomes effective. A subsequent contract must include a uniform reimbursement rate that is equal to or greater than the rate in the immediately prior contract.

(2) Apply to all warranty repair orders written while the agreement is in effect.

(3) At any time during the period the contract is in effect:

(A) be available to any franchisee of the same line make as the franchisees who entered into the contract with the manufacturer or distributor; and

(B) be available to a franchisee of the same line make on the same terms as apply to the franchisees who entered into the contract with the manufacturer or distributor.

(4) Be for a term not to exceed three (3) years.

(5) Allow any party to the uniform warranty reimbursement policy to terminate the policy with thirty (30) days prior written notice to all parties upon the annual anniversary of the policy, if the policy is for at least one (1) year.

(6) Remain in effect for the entire original period if the manufacturer and at least one (1) franchisee remain parties to the policy.

(c) A manufacturer or distributor that enters into a contract with its franchisees under subsection (a) may seek to recover only its costs from a franchisee that receives a higher reimbursement rate, if authorized by law, subject to the following:

(1) Costs may be recovered only by increasing invoice prices on new vehicles received by the franchisee.

(2) A manufacturer or distributor may make an exception for vehicles that are titled in the name of a purchaser in another state. However, price increases imposed for the purpose of

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recovering costs imposed by this section may vary from time to time and from model to model and must apply uniformly to all franchisees of the same line make that have requested reimbursement for warranty repairs at a level higher than provided for in the agreement.

(d) A manufacturer or distributor that enters into a contract with its franchisees under subsection (a) shall do the following:

(1) Certify to the secretary under oath, in a writing signed by a representative of the manufacturer or distributor, that at the time the contract was entered into at least thirty percent (30%) of the franchisees of the line make were parties to the contract.

(2) File a copy of the contract with the bureau at the time of the certification.

(3) Maintain a file that contains the information upon which the certification required under subdivision (1) is based for three (3) years after the certification is made.

Sec. 17. (a) It is an unfair practice for a manufacturer or distributor to:

(1) fail to pay all claims made by dealers for compensation for delivery and preparation work and warranty work not later than thirty (30) days after the claim is approved;

(2) fail to approve or disapprove a claim not later than thirty (30) days after receipt of the claim; or

(3) disapprove a claim without notice to the dealer in writing of the grounds for disapproval.

(b) A manufacturer or distributor may:

(1) audit a claim made by a dealer; or

(2) charge back to a dealer any amounts paid on a false or unsubstantiated claim;

for up to two (2) years after the date on which the claim is paid. However, the limitations of this subsection do not apply if the manufacturer or distributor can prove fraud on a claim. A manufacturer or distributor shall not discriminate among dealers with regard to auditing or charging back claims.

Sec. 18. It is an unfair practice for a manufacturer or distributor to sell a motor vehicle for resale to a person not licensed under this article.

Sec. 19. It is an unfair practice for a manufacturer or distributor to refuse or fail to indemnify and hold harmless a dealer, upon written notification from the dealer, from all losses, costs, and expenses that result or arise from or are related to a

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1 complaint, claim, defense, or suit against the dealer that concerns  
2 defects in a motor vehicle or other goods or services that are the  
3 responsibility of the manufacturer.

4 **Sec. 20.** It is an unfair practice for an automobile auctioneer, a  
5 wholesale dealer, or a transfer dealer, in connection with the  
6 auctioneer's or dealer's business, to use false, deceptive, or  
7 misleading advertising or to engage in deceptive acts or practices.

8 **Sec. 21.** It is an unfair practice for an employee, an agent, an  
9 officer, a partner, or a representative of a licensee to engage in a  
10 practice prohibited by this chapter.

11 **Sec. 22. (a)** A dealer may not transfer, assign, or sell the business  
12 and assets of a dealership or an interest in the dealership to  
13 another person under an agreement that contemplates or is  
14 conditioned on a continuation of the franchise relationship with the  
15 manufacturer or distributor unless the dealer first:

16 (1) notifies the manufacturer or distributor of the dealer's  
17 decision to make the transfer, assignment, or sale by written  
18 notice; and

19 (2) obtains the approval of the manufacturer or distributor.

20 The dealer must provide the manufacturer or distributor with  
21 completed application forms and related information generally  
22 used by the manufacturer or distributor to conduct a review of  
23 such a proposal, and a copy of all agreements regarding the  
24 proposed transfer, assignment, or sale.

25 (b) The manufacturer or distributor shall send a letter by  
26 certified mail to the dealer not later than sixty (60) days after the  
27 manufacturer or distributor receives the information specified in  
28 subsection (a). The letter must indicate any disapproval of the  
29 transfer, assignment, or sale and must set forth the material  
30 reasons for the disapproval. If the manufacturer or distributor  
31 does not respond by letter not later than sixty (60) days after the  
32 manufacturer or distributor receives the information under  
33 subsection (a), the manufacturer's or distributor's consent to the  
34 proposed transfer, assignment, or sale is considered to have been  
35 granted. A manufacturer or distributor may not unreasonably  
36 withhold approval of a transfer, assignment, or sale under this  
37 section.

38 (c) A manufacturer or distributor has a right of first refusal as  
39 specified in the franchise agreement to acquire the new vehicle  
40 dealer's assets or ownership if there is a proposed change of more  
41 than fifty percent (50%) of the dealer's ownership or proposed  
42 transfer of more than fifty percent (50%) of the new vehicle

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dealer's assets and all of the following are met:

(1) The manufacturer or distributor notifies the dealer in writing of the intent of the manufacturer or distributor to exercise the right of first refusal within the sixty (60) day notice period under subsection (b).

(2) The exercise of the right of first refusal will result in the dealer and the dealer's owners receiving consideration, terms, and conditions that are either the same as or better than those they have contracted to receive under the proposed change of more than fifty percent (50%) of the dealer's ownership or transfer of more than fifty percent (50%) of the new vehicle dealer's assets.

(3) The proposed change of the dealership's ownership or transfer of the new vehicle dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one (1) or more of the dealer's owners to any of the following:

(A) A designated family member or members including any of the following members of one (1) or more dealer owners:

- (i) The spouse.
- (ii) A child.
- (iii) A grandchild.
- (iv) The spouse of a child or a grandchild.
- (v) A sibling.
- (vi) A parent.

(B) A manager:

- (i) employed by the dealer in the dealership during the previous four (4) years; and
- (ii) who is otherwise qualified as a dealer operator.

(C) A partnership or corporation controlled by any of the family members described in clause (A).

(D) A trust arrangement established or to be established:

- (i) for the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards; or
- (ii) to provide for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or the principal owner or owners.

(4) Except as otherwise provided in this subsection, the manufacturer or distributor agrees to pay the reasonable

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expenses, including reasonable attorney's fees, that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, and that are incurred by the proposed owner or transferee before the manufacturer's or distributor's exercise of the right of first refusal in negotiating and implementing the contract for the proposed change of the dealer ownership or the transfer of the new vehicle dealer's assets. Payment of expenses and attorney's fees is not required if the dealer has failed to submit an accounting of those expenses not later than twenty (20) days after the dealer receives the manufacturer's or distributor's written request for such an accounting. An expense accounting may be requested by a manufacturer or distributor before exercising the right of first refusal.

(d) Violation of this section by the manufacturer or distributor is an unfair practice by a manufacturer or distributor.

Sec. 23. It is an unfair practice for a manufacturer, distributor, officer, or agent to do any of the following:

(1) Require, coerce, or attempt to coerce a new motor vehicle dealer in Indiana to:

(A) change the location of the dealership;

(B) make any substantial alterations to the use of franchises; or

(C) make any substantial alterations to the dealership premises or facilities;

if to do so would be unreasonable or would not be justified by current economic conditions or reasonable business considerations. This subdivision does not prevent a manufacturer or distributor from establishing and enforcing reasonable facility requirements.

(2) Require, coerce, or attempt to coerce a new motor vehicle dealer in Indiana to divest ownership of or management in another line or make of motor vehicles that the dealer has established in its dealership facilities with the prior written approval of the manufacturer or distributor.

(3) Establish or acquire wholly or partially a franchisor owned outlet engaged wholly or partially in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement or, if no exclusive territory is designated, competing unfairly with the franchisee within a reasonable market area. A franchisor is not considered to be competing unfairly if

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operating:

(A) a business for less than two (2) years;

(B) in a bona fide retail operation that is for sale to any qualified independent person at a fair and reasonable price; or

(C) in a bona fide relationship in which an independent person has made a significant investment subject to loss in the business operation and can reasonably expect to acquire majority ownership or managerial control of the business on reasonable terms and conditions.

This subdivision does not apply to recreational vehicle manufacturer franchisors.

**Sec. 24.** (a) This section does not apply to the relocation of a new motor vehicle dealer to a location that is not more than two (2) miles from its established place of business.

(b) This section does not apply to the reopening or replacement in a relevant market area of a closed dealership that has been closed within the preceding year, if the established place of business of the reopened or replacement dealer is within two (2) miles of the established place of business of the closed dealership.

(c) Before a franchisor enters into a franchise establishing or relocating a new motor vehicle dealer within a relevant market area where the same line make is represented, the franchisor shall give written notice to each new motor vehicle dealer of the same line make in the relevant market area of the franchisor's intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(d) Not later than thirty (30) days after:

(1) receiving the notice provided for in subsection (c); or

(2) the end of any appeal procedure provided by the franchisor;

a new motor vehicle dealer may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishing or relocating of a proposed new motor vehicle dealer. If an action is filed under this section, the franchisor may not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter. An action brought under this section shall be given precedence over all other civil matters on the docket of the court.

(e) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line

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1 make, the court shall take into consideration the existing  
2 circumstances, including the following:

- 3 (1) Permanency of the investment.
- 4 (2) Effect on the retail new motor vehicle business and the  
5 consuming public in the relevant market area.
- 6 (3) Whether it is injurious or beneficial to the public welfare.
- 7 (4) Whether the new motor vehicle dealers of the same line  
8 make in that relevant market area are providing adequate  
9 competition and convenient consumer care for the motor  
10 vehicles of that line make in the market area, including the  
11 adequacy of motor vehicle sales and qualified service  
12 personnel.
- 13 (5) Whether the establishment or relocation of the new motor  
14 vehicle dealer would promote competition.
- 15 (6) Growth or decline of the population and the number of  
16 new motor vehicle registrations in the relevant market area.
- 17 (7) The effect on the relocating dealer of a denial of its  
18 relocation into the relevant market area.

19 **Sec. 25. It is an unfair practice for a person to:**

- 20 (1) act as;
- 21 (2) offer to act as; or
- 22 (3) profess to be;

23 a broker in the advertising, buying, or selling of at least five (5)  
24 new or used vehicles per year.

25 **Sec. 26. It is an unfair practice for a dealer or dealer sales agent**  
26 **to, in connection with the offer, sale, or purchase of a vehicle,**  
27 **directly or indirectly:**

- 28 (1) employ a device, scheme, or artifice to defraud;
- 29 (2) make an untrue statement of a material fact or omit to  
30 state a material fact necessary to make the statement made,  
31 in light of the circumstances under which the statement was  
32 made, not misleading; or
- 33 (3) engage in an act, practice, or course of business that  
34 operates or would operate as a fraud or deceit upon another  
35 person.

#### 36 **Chapter 14. Damage to New Motor Vehicles**

37 **Sec. 1. Notwithstanding the terms, provisions, or conditions of**  
38 **an agreement or franchise, a motor vehicle dealer is solely liable**  
39 **for damage to a new motor vehicle:**

- 40 (1) after acceptance from the carrier or transporter; and
- 41 (2) before delivery to the ultimate purchaser.

42 **Sec. 2. Notwithstanding the terms, provisions, or conditions of**

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any agreement or franchise, a manufacturer, converter manufacturer, or automotive mobility dealer is liable for all damage to a new motor vehicle before delivery of the motor vehicle to a carrier or transporter.

Sec. 3. A motor vehicle dealer is liable for damage to a new motor vehicle after the motor vehicle is delivered to the carrier or transporter only if the dealer selects the method of transportation, mode of transportation, and the carrier or transporter. In all other instances, the manufacturer is liable for carrier related damage to a new motor vehicle.

Sec. 4. (a) This section does not apply to damage to:

- (1) glass;
- (2) radios;
- (3) tires; and
- (4) bumpers;

when replaced by identical manufacturer's original equipment.

(b) Any uncorrected or corrected damage to a new motor vehicle exceeding four percent (4%) of the manufacturer's suggested retail price (as defined in 26 U.S.C. 4216), as measured by retail repair costs, must be disclosed in writing before delivery of the motor vehicle to an ultimate purchaser.

Sec. 5. Repaired damage to a customer-ordered new motor vehicle not exceeding four percent (4%) of the manufacturer's suggested retail price does not need to be disclosed at the time of sale.

#### Chapter 15. Succession to Franchise by Designated Family Members

Sec. 1. This chapter does not apply to a franchise if:

- (1) the franchise is granted to a dealer other than a new motor vehicle dealer; and
- (2) the franchise or other written document filed with the franchisor includes the franchisee's designation of a successor to the franchise who is not the:
  - (A) spouse of the franchisee;
  - (B) child of the franchisee;
  - (C) grandchild of the franchisee;
  - (D) spouse of a:
    - (i) child; or
    - (ii) grandchild;
  - of the franchisee;
  - (E) parent of the franchisee; or
  - (F) sibling of the franchisee.

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1        **Sec. 2. A designated family member of a deceased or**  
 2 **incapacitated franchisee may succeed the franchisee under the**  
 3 **existing franchise if:**

4            (1) the manufacturer or distributor determines, subject to  
 5            section 3 of this chapter, that the existing franchise should be  
 6            honored; and

7            (2) the designated family member complies with section 4 of  
 8            this chapter.

9        **Sec. 3. A manufacturer or distributor may refuse to honor the**  
 10 **succession of an existing franchise under section 2 of this chapter**  
 11 **only for good cause.**

12        **Sec. 4. To qualify under section 2 of this chapter to succeed a**  
 13 **franchisee under the existing franchise, a designated family**  
 14 **member must do all of the following:**

15            (1) Not later than one hundred twenty (120) days after the  
 16            franchisee's death or disability, give the manufacturer or  
 17            distributor written notice of the designated family member's  
 18            intention to succeed to the franchise.

19            (2) Agree to be bound by all terms and conditions of the  
 20            existing franchise.

21            (3) Meet the criteria generally applied at the time of the death  
 22            or incapacity of the franchisee by the manufacturer or  
 23            distributor in qualifying new motor vehicle dealers as  
 24            franchisees.

25            (4) If requested by the manufacturer or distributor, promptly  
 26            supply personal and financial data that is reasonably  
 27            necessary for the manufacturer or distributor to determine if  
 28            the existing franchise should be honored.

29        **Sec. 5. (a) Not later than sixty (60) days after receipt of:**

30            (1) notice from a designated family member under section 4(1)  
 31            of this chapter; or

32            (2) requested personal or financial data under section 4(4) of  
 33            this chapter;

34        **a manufacturer or distributor that determines that good cause**  
 35 **exists for refusing to honor the existing franchise shall serve notice**  
 36 **of the determination on the designated family member.**

37        **(b) The notice required under subsection (a) must state the**  
 38 **following:**

39            (1) The specific grounds for the manufacturer's or  
 40            distributor's determination.

41            (2) The date on which the existing franchise will be  
 42            discontinued, which must not be earlier than ninety (90) days

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after the date the notice is served.

(c) If notice of the manufacturer's determination is not served within the time specified in subsection (a) and does not comply with subsection (b), the franchise must be honored and is not subject to discontinuance under this chapter.

#### Chapter 16. Administration and Judicial Review

Sec. 1. (a) This chapter shall be administered by the division. The secretary shall appoint the director, who is responsible for the direction and supervision of the division and the administration of this article under the direction and control of the secretary. The salary of the director shall be paid out of funds appropriated for the administration of this article. The director serves at the will of the secretary.

(b) The secretary:

(1) shall employ employees, including a director, investigators or attorneys, necessary for the administration of this article; and

(2) shall fix the compensation of the employees with the approval of the budget agency.

(c) It is unlawful for the director or an officer, employee, or designee of the secretary to use for personal benefit or the benefit of others records or other information obtained by or filed with the dealer services division under this article that are not public. This article does not authorize the director or an officer, employee, or designee of the secretary to disclose the record or information, except in accordance with this chapter.

(d) This article does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(e) The director may develop and implement dealer's and vehicle purchaser's education initiatives to inform dealers and the public about the offer or sale of vehicles, with particular emphasis on the prevention and detection of fraud involving vehicle sales. In developing and implementing these initiatives, the director may collaborate with public and nonprofit organizations with an interest in consumer education. The director may accept a grant or donation from a person that is not affiliated with the dealer industry or from a nonprofit organization, regardless of whether the organization is affiliated with the dealer industry, to develop and implement consumer education initiatives. This subsection does not authorize the director to require participation or monetary contributions of a registrant in an education program.

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(f) Fees and funds of any kind accruing from the administration of this article shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in either the state general fund or the dealer enforcement account established by IC 9-32-6-2. Expenses incurred in the administration of this article shall be paid from the state general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However, grants and donations under subsection (e), costs of investigations, and civil penalties recovered under this chapter shall be deposited by the treasurer of state in the dealer enforcement account established by IC 9-32-6-2. The funds in the dealer compliance account established by IC 9-32-6-1 shall be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this article.

(g) In connection with the administration and enforcement of this article, the attorney general shall render all necessary assistance to the director upon the request of the director. To that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the director as the demands of the division require. Expenses incurred by the attorney general for the purposes stated under this subsection are chargeable against and shall be paid out of funds appropriated to the attorney general for the administration of the attorney general's office. The attorney general may authorize the director and the director's designee to represent the director and the division in any proceeding involving enforcement or defense of this article.

(h) The secretary, the director, and employees of the division are not liable in an individual capacity, except to the state, for an act done or omitted in connection with the performance of their duties under this article.

(i) The director, and each attorney or investigator designated by the director:

- (1) are police officers of the state;
- (2) have all the powers and duties of police officers in conducting investigations for violations of this article, or in serving any process, notice, or order issued by an officer, authority, or court in connection with the enforcement of this article: and
- (3) comprise the enforcement department of the division.

The division is a criminal justice agency for purposes of

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1 IC 5-2-4-1(3) and IC 10-13-3-6.

2 (j) The provisions of this article delegating and granting power  
3 to the secretary, the division, and the director shall be liberally  
4 construed to the end that:

5 (1) the practice or commission of fraud may be prohibited and  
6 prevented;

7 (2) disclosure of sufficient and reliable information in order  
8 to afford reasonable opportunity for the exercise of  
9 independent judgment of the persons involved may be  
10 assured; and

11 (3) qualifications may be prescribed to assure availability of  
12 reliable dealers and dealer sales agents engaged in and in  
13 connection with the offer, barter, sale, purchase, transfer, or  
14 disposition of vehicles and the obtaining of vehicle financing  
15 in this state.

16 It is the intent and purpose of this article to delegate to, grant to,  
17 and vest in the secretary, the division, and the director full and  
18 complete power to carry into effect and accomplish the purpose of  
19 this article and to charge them with full and complete  
20 responsibility for the effective administration of this article.

21 (k) Copies of any statement and documents filed in the office of  
22 the secretary and of any records of the secretary certified by the  
23 director shall be admissible in any prosecution, action, suit, or  
24 proceeding based on, arising out of, or under this article to the  
25 same effect as the original of the statement, document, or record  
26 would be if actually produced.

27 (l) IC 4-21.5 is not applicable to any of the proceedings under  
28 this article.

29 Sec. 2. (a) An order issued under this article may deny a dealer  
30 license application or dealer sales agent application for registration  
31 if the secretary finds that the order is in the public interest and  
32 subsection (c) authorizes the action. An order may condition or  
33 limit the license of an applicant to be a dealer or dealer sales agent  
34 and, if the applicant for a dealer license is a partner, officer,  
35 director, or person having similar status or performing similar  
36 functions, or a person directly or indirectly in control of the  
37 dealership, the order may condition or limit the license.

38 (b) If the secretary finds that the order is in the public interest  
39 and subsection (c) authorizes the action, an order issued under this  
40 article may deny, revoke, suspend, condition, limit, or permanently  
41 bar the granting of a license to or an application for a license from  
42 a dealer, or a partner, an officer, a director, or a person having a

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1 similar status or performing similar functions as a dealer, or a  
 2 person directly or indirectly in control of the dealer, or a dealer  
 3 sales agent registration or application for a dealer sales agent  
 4 application for registration from a dealer sales agent or a person  
 5 directly or indirectly acting as a dealer sales agent. However, the  
 6 secretary may not:

7 (1) institute a revocation or suspension proceeding under this  
 8 subsection based on an order issued under the law of another  
 9 state that is reported to the secretary or a designee of the  
 10 secretary more than one (1) year after the date of the order on  
 11 which it is based; or

12 (2) issue an order on the basis of an order issued under the  
 13 dealer services laws of another state unless the other order  
 14 was based on conduct for which subsection (c) would  
 15 authorize the action had the conduct occurred in Indiana.

16 (c) A person may be disciplined under subsections (a) and (b) if  
 17 the person:

18 (1) has filed an application for a dealer license or registration  
 19 as a dealer sales agent in this state under this article within  
 20 the previous ten (10) years, which, as of the effective date of  
 21 license or registration or as of any date after filing in the case  
 22 of an order denying effectiveness, was incomplete as to a  
 23 material fact or contained a statement that, in light of the  
 24 circumstances under which it was made, was false or  
 25 misleading with respect to a material fact;

26 (2) knowingly violated or knowingly failed to comply with this  
 27 article within the previous ten (10) years;

28 (3) has been convicted of a felony within the previous ten (10)  
 29 years or has been convicted of a misdemeanor involving theft,  
 30 fraud or an aspect of business involving the offer, sale,  
 31 financing, repair or manufacture of a vehicle;

32 (4) is enjoined or restrained by a court with jurisdiction in an  
 33 action instituted by a state or the United States from engaging  
 34 in or continuing an act, practice, or course of business  
 35 involving an aspect of a business involving the offer, barter,  
 36 sale, purchase, transfer, financing, repair or manufacture of  
 37 a vehicle;

38 (5) refuses to allow or otherwise impedes the secretary from  
 39 conducting an audit or inspection;

40 (6) has engaged in dishonest or unethical practices in a  
 41 business involving the offer, barter, sale, purchase, transfer,  
 42 financing, repair or manufacture of a vehicle within the

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- previous ten (10) years;
- (7) is engaging in unfair practices as set forth in this article;
- (8) is on the most recent tax warrant list supplied to the secretary by the department of state revenue;
- (9) violates IC 23-2-2.7; or
- (10) violates IC 9-19-9.

(d) The secretary may suspend or deny an application summarily, restrict, condition, limit, censure, bar, or suspend a dealer license or dealer sales agent registration before final determination of an administrative proceeding. Upon the issuance of an order, the secretary shall promptly notify each person subject to the order:

- (1) that the order has been issued;
- (2) the reasons for the action; and
- (3) that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing.

If a hearing is not requested and no hearing is ordered by the secretary within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the secretary, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) Revocation or suspension of a license of a manufacturer, a distributor, a factory branch, a dealer, or an automobile auctioneer may be limited to one (1) or more locations, to one (1) or more defined areas, or only to certain aspects of the business.

(f) Except as provided in subsection (d), an order may not be issued under this section without:

- (1) appropriate notice to the applicant or registrant;
- (2) an opportunity for a hearing; and
- (3) findings of fact and conclusion of law in a record.

(g) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the secretary under subsections (a) and (b) to the same extent as the non-complying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

**Sec. 3. Information or documents obtained by the division in the course of an investigation, unless such information or documents are published by the division under the authority of the division**

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under statute or rule, are confidential. Such information and documents may be disclosed to:

- (1) representatives of domestic or foreign governmental authorities;
- (2) self-regulatory agencies;
- (3) state or federal law enforcement officers;
- (4) special counsels; and
- (5) trustees in a bankruptcy proceeding

upon the acceptance of an access request letter. The division may also, to the extent necessary, disclose such information and documents in court proceedings, when ordered to do so by a court with jurisdiction, or when appropriate in furtherance of any ongoing investigation or proceeding.

Sec. 4. A person complying with any request, order, or subpoena issued by the division for the production of documentary evidence shall retain the originals and shall provide the division with clearly legible, true, and complete copies of the documents requested, along with a signed cover letter, which must identify those documents with a reasonable degree of specificity.

Sec. 5. The secretary may cooperate, coordinate, consult, and subject to this article, share records and information with:

- (1) the dealer services regulator in another state;
- (2) a foreign jurisdiction;
- (3) the United States Department of Justice;
- (4) an insurance regulator; or
- (5) a governmental law enforcement agency.

Sec. 6. All dealers licensed with the division shall, upon request, provide members of the staff of the division prompt access, during reasonable business hours, to that part of the premises at the dealer's place of business where:

- (1) documents are stored; or
- (2) vehicle sales are offered, made or processed.

Sec. 7. (a) A dealer licensed or required to be licensed under this article shall make and maintain the records, accounts, correspondence, memoranda, papers, books, and other records required under this article.

(b) Dealer records required to be maintained under IC 9-32-5-14 and other records required under this article may be maintained in any form of data storage acceptable to the secretary if the records are readily accessible and available to copy by an investigating or auditing employee of the secretary upon demand at the place of business of the dealer.

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(c) The records of a dealer licensed or required to be licensed under this article are subject to such reasonable periodic, special, or other audits or inspections by a representative of the secretary, within or outside Indiana, as the secretary considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The representative of the secretary may copy, and remove for audit or inspection copies of, the records the secretary reasonably considers necessary or appropriate to conduct the audit or inspection.

(d) Dealer records required to be maintained under IC 9-32-5-14 and other records required under this article must be maintained at the place of business of a dealer for a period of two (2) years. Following the two (2) year period, records may be moved offsite but must be maintained for a period of five (5) years.

Sec. 8. At the request of the dealer services division or equivalent regulator of another state or foreign jurisdiction, the secretary may provide assistance if the requesting regulator states that the requesting regulator is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to dealer matters that the requesting regulator administers or enforces. The secretary may provide assistance by using the authority to investigate and the powers conferred by this article as the secretary determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this article or other law of Indiana if occurring in Indiana. In deciding whether to provide the assistance, the secretary may consider:

- (1) whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within the state or foreign jurisdiction of the requesting regulator to the secretary on dealer matters when requested;
- (2) whether compliance with the request would violate or prejudice the public policy of Indiana; and
- (3) the availability of resources and employees of the division to carry out the request for assistance.

Sec. 9. (a) A person shall cooperate in an inquiry, investigation, or inspection conducted by, or on behalf of, the division for purposes of determining whether or not a person has violated or is about to violate any provision under this article. The willful failure of a person to cooperate, absent a bona fide claim of privilege,

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1 may:

- 2 (1) be considered by the division a violation of statute; and  
 3 (2) thus subject the person to denial, suspension, or revocation  
 4 or licensing or registration or a bar from licensing or  
 5 registration.

6 (b) The following are examples of, but not limited to, conduct by  
 7 a person that may be deemed a failure to cooperate:

- 8 (1) The failure to timely respond by way of appearance or  
 9 production of documents to a subpoena or order issued by the  
 10 division.

- 11 (2) The failure to answer any question pertinent to inquiry  
 12 unless the response to the question is subject to a bona fide  
 13 claim of privilege.

- 14 (3) The failure to grant the division personnel access to:

15 (A) the business premises of a dealer or a person required  
 16 to be licensed as a dealer; or

17 (B) the records and documents that the dealer or person  
 18 required to be licensed as a dealer is required, by statute or  
 19 rule, to make available for inspection.

- 20 (4) The failure to attend a scheduled proceeding at which the  
 21 appearance of the person is directed. If a person elects to  
 22 retain counsel for the purpose of representation in any such  
 23 proceeding, it is the responsibility of the person to do so in a  
 24 timely fashion. The failure of a person to retain counsel,  
 25 absent a showing of good cause, does not require an  
 26 adjournment of the proceeding.

- 27 (5) The failure to timely respond or to provide information  
 28 requested under a demand under this chapter.

- 29 (6) Aiding or abetting the failure of another person to  
 30 cooperate.

31 Sec. 10. (a) The division may examine without notice in a  
 32 manner reasonable under the circumstances the records, within or  
 33 outside Indiana, of a licensed dealer in order to determine  
 34 compliance under this article. The dealer shall make the records  
 35 available to the division in a legible form.

36 (b) The division may copy records or require a dealer to copy  
 37 records and provide the copies to the division to the extent and in  
 38 the manner reasonable under the circumstances.

39 (c) The division may impose a reasonable fee for the expense of  
 40 making copies under subsection (b).

41 Sec. 11. (a) The secretary or a designee of the secretary may  
 42 refer the facts drawn from an investigation to the prosecuting

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attorney of the county in which a crime is alleged to have been committed.

(b) The secretary may assist the prosecuting attorney in prosecuting an action brought subsequent to a referral made under subsection (a), which may include a division attorney serving as a special deputy prosecutor appointed by the prosecuting attorney.

(c) A prosecuting attorney to which facts concerning fraud are referred under subsection (a) may refer the matter to the attorney general.

(d) If a matter has been referred to the attorney general under subsection (c), the attorney general may:

(1) file an information in a court with jurisdiction over the matter in a county in which the offense is alleged to have been committed; and

(2) prosecute the alleged offense.

The secretary and the division shall assist the attorney general in prosecuting an action referred under subsection (c), which may include a division attorney serving as a special deputy attorney general appointed by the attorney general.

Sec. 12. (a) All dealers operating as a:

(1) corporation;

(2) limited liability company;

(3) limited partnership; or

(4) limited liability partnership;

shall file and maintain all filings required to remain in good standing with the secretary of state business services division.

(b) The dealer shall provide the secretary a federal tax identification number and a registered retail merchant's certificate number issued under IC 6-2.5-8.

(c) The dealer must, for the entire licensing period, have an established place of business with a physical Indiana address. The dealer may not have a mailing address that differs from the actual location of the business.

(d) The applicant and all corporate officers, partners, and owners must submit to a national criminal history background check (as defined in IC 10-13-3-12) administered by the state police at the expense of the applicant and the corporate officers, partners, and owners. The secretary may deny an application based upon felony or misdemeanor convictions related to dealing in motor vehicles.

(e) The dealer and the corporation, company, or partnership must be in good standing with the bureau, the department of state

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revenue and the state police department.

Section 13. (a) An irrevocable consent to service of process required by this article must be signed and filed in the form required by the secretary. A consent appointing the secretary as the agent of the person for service of process in an action or proceeding against the:

- (1) person;
- (2) successor of the person; or
- (3) personal representative of the person;

has the same force and validity as if the service were made personally on the person filing the consent.

(b) If a person, including a nonresident of Indiana, engages in an act, practice, or course of business prohibited or made actionable by this article and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the appointment of the secretary as the person's agent for service of process in an action or proceeding against the person or the successor or personal representative of the person.

(c) Service under subsection (a) or (b) may be made by providing a copy of the process to the secretary, but it is not effective unless:

- (1) the plaintiff promptly sends notice of the service and a copy of the process, return receipt requested, to the respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address of the respondent, or takes other reasonable steps to give notice; and
- (2) the plaintiff files an affidavit of compliance in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the secretary in a civil action in which the secretary is the moving party.

(d) Service under subsection (c) may be used in a proceeding before the secretary or by the secretary in a civil action in which the secretary is the moving party.

(e) If process is served under subsection (c), the court, or the secretary in a proceeding before the secretary, shall order a continuance as is necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

Sec. 14. It is unlawful for a person to:

- (1) make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under

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which it is made, is false or misleading with a material fact; or  
 (2) in connection with the statement, omit to state a material  
 fact necessary to make the statement made, in light of the  
 circumstances under which it was made, not false or  
 misleading.

Sec. 15. (a) A person shall not be represented at any hearing  
 before the division other than as provided in subsection (b) or (c)  
 or as otherwise permitted by the division.

(b) An individual may appear on the individual's own behalf. A  
 member of a partnership may represent the partnership. A bona  
 fide officer of a trust or association may represent the trust or  
 association. An officer or employee of a state commission or of a  
 department or political subdivision of a state may represent the  
 state commission or the department or political subdivision of  
 the state in any proceeding.

(c) A dealer, person, or corporation may be represented in any  
 proceeding by an attorney admitted to practice law in Indiana.

Sec. 16. (a) When an individual appears in the individual's own  
 behalf before the division in a particular proceeding which involves  
 a hearing or an opportunity for hearing, the individual shall file  
 with the secretary or otherwise state on the record an address to  
 which a notice or other written communication required to be  
 served upon or furnished to the individual may be sent.

(b) When an attorney appears before the division in a  
 representative capacity in a particular proceeding which involves  
 a hearing or an opportunity for hearing, the attorney shall file with  
 the secretary a written notice of the appearance. The written notice  
 must state:

- (1) the name, address, and telephone number of the attorney;  
 and
- (2) the name and address of the person or persons on whose  
 behalf the attorney appears.

An additional notice or other written communication required to  
 be served or furnished to the client may be sent to the attorney at  
 the stated address of the attorney.

(c) A person appearing or practicing before the division in a  
 representative capacity may be required to file a power of attorney  
 with the secretary, showing the authority of the person to act in a  
 representative capacity.

Sec. 17. The secretary may deny, temporarily or permanently,  
 the privilege of appearing or practicing before the secretary in any  
 way to a person other than an attorney admitted to practice law in

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Indiana, who is found by the secretary, after notice of and opportunity for hearing in the matter:

- (1) to not possess the requisite qualifications to represent others;
- (2) to be lacking in character or integrity; or
- (3) to have engaged in unethical or improper professional conduct.

Sec. 18. Contemptuous conduct at a hearing before the division is a ground for:

- (1) exclusion from the hearing; and
- (2) summary suspension without a hearing for the duration of the hearing.

Sec. 19. Practicing before the division shall include, but is not limited to:

- (1) transacting business with the division; and
- (2) the preparation of a statement, an opinion, or other paper by an attorney, accountant, engineer, or other expert, filed with the secretary in:
  - (A) a registration statement;
  - (B) a notification;
  - (C) an application;
  - (D) a report; or
  - (E) other document;

with the consent of the attorney, accountant, engineer, or other expert.

Sec. 20. In a proceeding where an attorney has filed an appearance under section 16(b) of this chapter, a notice or other written communication required to be served upon or furnished to the client shall also be served upon or furnished to the attorney, or at least one (1) attorney if the client is represented by more than one (1) attorney, in the same manner as prescribed by the client, even though the communication also is furnished directly to the client.

Sec. 21. (a) In a case in which the division is the moving party, a notice of the initiation of proceedings shall be given to each respondent by any manner of service provided for service of summons in actions at law under the Indiana Rules of Trial Procedure, or as otherwise provided by law.

(b) The parties or persons entitled to notice shall be:

- (1) timely informed of the nature of the legal authority and jurisdiction under which the proceeding has been initiated; and

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(2) furnished a short and simple statement of the matter of fact and law to be considered and determined.

In a proceeding in which an answer is directed, the order for proceeding shall set forth the action proposed and the factual and legal basis alleged in such detail as will permit a specific response.

Sec. 22. (a) Where a notice of initiation of proceedings or an order for proceedings is accompanied by a notice of hearing issued at the insistence of the secretary the respondent will be considered to have consented to the date set for the hearing, unless within five (5) business days of receipt by the respondent of the notice of hearing, the respondent requests in writing that the hearing be rescheduled.

(b) A notice of hearing after the service of notice of the initiation of proceedings shall be served by any manner provided for service after the service of summons under the Indiana Rules of Trial Procedure.

(c) Unless otherwise ordered by the secretary, notice of any public hearing may be given by general circulation by release to the public press.

Sec. 23. (a) All pleadings, papers, discovery, briefs, proposed findings and conclusions or applications for orders, shall be filed with the secretary and shall be served at the time of filing upon all parties to the proceedings by any manner provided for service after service of the summons under the Indiana Rules of Trial Procedure.

(b) Proof of service must be made by filing with the secretary:

(1) an affidavit of service; or

(2) when service has been filed by an attorney, a certificate of service indicating the manner of service on the secretary and any other party.

Sec. 24. In any proceeding, amendments to the matters of fact and law to be considered may be authorized by the secretary, for cause shown, at any time.

Sec. 25. (a) In an order for proceeding, the secretary may direct that a party respondent shall file an answer to the allegations contained in the order for proceeding and any party in the proceeding may file an answer.

(b) Except where a different period is provided by rule or by order, a party respondent directed to file an answer as provided in subsection (a) shall do so within fifteen (15) days after service upon the party respondent of the order for proceeding. Any other person admitted to such a proceeding may be required to file an answer

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1 within the time as is directed by the secretary. Where amendments  
 2 to the matters of fact and law to be considered in the proceeding  
 3 are authorized subsequent to the institution of the proceeding, the  
 4 parties may be required to answer the matters of fact and law to be  
 5 considered as amended within a reasonable time.

6 (c) Unless otherwise directed by the secretary, an answer  
 7 required by this section must specifically:

8 (1) admit;

9 (2) deny; or

10 (3) state that the party does not have and is unable to obtain  
 11 sufficient information to admit or deny each allegation in the  
 12 order for proceeding.

13 A statement of a lack of information has the effect of a denial. An  
 14 allegation not denied is deemed to be admitted. When a party  
 15 intends in good faith to deny only a part or make a qualification of  
 16 an allegation, the party shall specify so much of it as is true and  
 17 shall deny only the remainder.

18 (d) If a party fails to file an answer within the time provided:

19 (1) that person is in default; and

20 (2) the proceeding may be determined against that party by  
 21 the secretary upon consideration of the order for proceeding,  
 22 the allegations of which may be considered to be true.

23 (e) An answer filed under this section shall be signed by the  
 24 party filing it or by at least one (1) attorney who represents the  
 25 party in the individual name of the attorney. The signature  
 26 constitutes a certificate by the signer that:

27 (1) the signer has read the answer;

28 (2) to the best of the signer's knowledge, information, and  
 29 belief there is a good ground to support the answer; and

30 (3) it is not interposed for delay.

31 Sec. 26. A party may propose in writing offers of settlement  
 32 which shall be submitted to and considered by the secretary where  
 33 time, the nature of the proceeding, and the public interest permit.  
 34 Such offers may be made at any time before the entry of a final  
 35 order, including before the initiation of proceedings. If the  
 36 secretary considers it appropriate, the secretary may also give the  
 37 party making the offer an opportunity to make an oral  
 38 presentation to the secretary. If the secretary rejects an offer of  
 39 settlement:

40 (1) the party making the offer shall be notified of the action of  
 41 the secretary;

42 (2) the offer of settlement is withdrawn; and

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(3) the offer and documents relating to the offer do not constitute a part of the record.

Sec. 27. (a) An interested official, department, commission, municipality, or other political subdivision of the state, or other interested representative, agency, authority, or instrumentality of the United States may become a party to any proceeding by filing a written motion.

(b) A person may, at the discretion of the secretary or other representative of the division conducting the hearing, be given leave to be heard in any proceeding regarding a matter affecting the interests of the person. Requests for leave to be heard must:

- (1) be in writing;
- (2) set forth the nature and extent of the applicant's interest in the proceeding; and
- (3) except where good cause for late filing is shown, be filed not later than two (2) days before the date fixed for the commencement of the hearing.

When a respondent is required to answer, requests for leave to be heard shall be filed within the time provided for the filing of the answer. The hearing officer may direct a person requesting leave to be heard to submit to examination as to the interest of the person in the proceeding.

(c) Leave to be heard under subsection (b) may include the rights of a party that the hearing officer considers appropriate. Persons granted leave to be heard are bound, except as may otherwise be determined by the hearing officer, by a stipulation between the parties to the proceeding with respect to procedure. Except as may otherwise be specifically directed by the hearing officer at the request of any person granted leave to be heard, a person granted leave to be heard is expected to be informed by attendance at public hearings and by examination of the public files of the division as to the various steps taken in the proceeding, including:

- (1) continuances;
- (2) the filing of:
  - (A) amendments;
  - (B) answers;
  - (C) motions;
  - (D) briefs by parties to the proceeding; or
- (3) the fixing of time for actions in subdivisions (1) and (2).

A person granted leave to be heard is not entitled as of right to notice of a step set forth in subdivisions (1) through (3) or to

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1 service of copies of documents.

2 (d) Except as provided in subsections (b) and (c), a person may  
3 not be admitted as a party to a proceeding by intervention unless  
4 the secretary is satisfied, on the basis of the written application of  
5 the person and any evidence taken in connection with the  
6 application, that:

7 (1) the participation of the person as a party will be in the  
8 public interest; and

9 (2) leave to be heard under subsections (b) and (c) would be  
10 inadequate for the protection of the interests of the person.

11 (e) A person who has not complied with subsection (b) may, in  
12 the discretion of the hearing officer, be permitted to file a  
13 memorandum or make an oral statement of the views of the  
14 person, and the hearing officer may accept for the record written  
15 communications received from the person. Unless offered and  
16 admitted as evidence of trust of the statements therein made, a  
17 memorandum and oral or written communication submitted under  
18 this subsection may be considered only to the extent that the  
19 statements therein made are otherwise supported by the record.

20 (f) The secretary may, by order in a case:

21 (1) modify the provisions of this section that would otherwise  
22 be applicable; and

23 (2) impose terms and conditions on the participation of a  
24 person in a proceeding that the secretary considers necessary  
25 or appropriate in the public interest.

26 Sec. 28. (a) Before a hearing or at another time during the  
27 course of a proceeding, to the extent practicable, where time, the  
28 nature of the proceeding, and public interest permit, the secretary  
29 or other representative of the division conducting the hearing may,  
30 at the request of a party or upon the motion of the secretary or the  
31 representative, hold a conference for the purpose of clarifying and  
32 simplifying issues by consent of the parties, to consider, if practical  
33 and reasonable:

34 (1) the possibility of obtaining stipulations and admissions of  
35 facts and of authenticity and contents of documents which will  
36 avoid unnecessary proof;

37 (2) expediting the presentation of evidence;

38 (3) the exchange of copies of proposed exhibits; and

39 (4) other matters that will:

40 (A) promote a fair and expeditious hearing; or

41 (B) aid in the disposition of the proceeding.

42 (b) At the conclusion of a conference, the hearing officer shall

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enter a ruling or order which recites the matters agreed upon by the parties and any procedural determinations made by the hearing officer.

**Sec. 29.** If a person who is named in an order for proceeding as one against whom findings may be made or sanctions imposed in the proceeding:

(1) does not file a notice of appearance in the proceeding, unless a different period is specified in the order; or

(2) fails to appear at a hearing of which the person has been notified;

the person is in default and the proceeding may be determined against the person upon consideration of the order for proceeding, the allegations of which may be considered to be true. For the purpose of this section, an answer constitutes a notice of appearance.

**Sec. 30.** Proceedings involving a common question of law or fact may be joined for hearing of any or all the matters in issue in the proceedings by order of the secretary, who may join the proceedings to avoid unnecessary costs or delay.

**Sec. 31.** In any proceeding involving a hearing or an opportunity for hearing, the parties must file proposed findings and conclusions. Any proposed findings or conclusion not briefed must be regarded as waived.

**Sec. 32. (a)** A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation, which shall be administered by the secretary or other representative of the division conducting the hearing. A party has the right to present such oral or documentary evidence and to conduct such cross-examination as is required for a full and true disclosure of the facts. The hearing officer shall:

(1) receive relevant and material evidence;

(2) rule upon offers of proof; and

(3) exclude all irrelevant, immaterial, or unduly repetitious evidence.

**(b)** The secretary, in connection with a hearing ordered by the secretary, shall issue subpoenas requiring the attendance and testimony of witnesses and subpoenas requiring the production of documentary or other tangible evidence at any designated place of hearing upon request by any party. However, if it appears to the secretary that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the secretary may, as a condition precedent to the issuance of the subpoena,

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1 require the person seeking the subpoena to show the general  
 2 relevance and reasonable scope of the testimony or other evidence  
 3 sought. If the secretary, after consideration of all the  
 4 circumstances, determines that the subpoena or a term of the  
 5 subpoena is unreasonable, oppressive, excessive in scope, or unduly  
 6 burdensome, the secretary may:

- 7 (1) refuse to issue the subpoena; or  
 8 (2) issue the subpoena only upon such conditions as fairness  
 9 requires.

10 In making the foregoing determination, if the secretary can do so  
 11 without undue inconvenience to the participants in the proceeding,  
 12 the secretary may inquire of the other participants whether they  
 13 will concede the facts sought to be proved. In this connection,  
 14 except with permission of the person seeking the subpoena, the  
 15 secretary shall not disclose the identity of the person sought to be  
 16 subpoenaed.

17 (c) Any person to whom a subpoena is directed may, before the  
 18 time specified in the subpoena for compliance, but not more than  
 19 five (5) days after the date of service of the subpoena, apply to the  
 20 secretary to quash or modify the subpoena, accompanying the  
 21 application with a brief statement of the reasons for the quashing  
 22 or modification. The secretary may deny the application  
 23 summarily or after notice to the person upon whose request the  
 24 subpoena was issued and opportunity for reply the secretary may:

- 25 (1) deny the application;  
 26 (2) quash or modify the subpoena; or  
 27 (3) condition denial of the application to quash or modify the  
 28 subpoena upon just and reasonable conditions, including, in  
 29 the case of a subpoena duces tecum, a requirement that the  
 30 person in whose behalf the subpoena was issued shall advance  
 31 the reasonable cost of transporting the documentary or other  
 32 tangible evidence to the designated place of hearing.

33 (d) Service of subpoena upon a person named in the subpoena  
 34 shall be made by delivering a copy of the subpoena to the person  
 35 and by tendering the fees for one (1) day's attendance and the  
 36 mileage as specified by subsection (f). When a subpoena is issued  
 37 at the instance of the division fees and mileage need not be  
 38 tendered at the time of service.

39 (e) Whenever service is to be made upon a person who is  
 40 represented in the pending proceeding by an attorney, the service  
 41 may be made upon the attorney. However:

- 42 (1) delivery of a copy of a subpoena and tender of the fees to

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a natural person may be made by:

(A) handing the subpoena and fees to the person;

(B) leaving the subpoena and fees at the person's office with the person in charge of the office;

(C) if there is no one in charge at the office of the person, leaving the subpoena and fees in a conspicuous place in the office;

(D) leaving the subpoena and fees at the last known place of residence of the person with a person at least eighteen (18) years of age residing there;

(E) mailing the subpoena and fees by registered or certified mail to the person at the last known address of the person; or

(F) a method whereby actual notice is given to the person and the fees are made available before the return date; and

(2) if the person to be served is not a natural person, delivery of a copy of the subpoena and the tender of the fees may be effected by:

(A) handing the subpoena and fees to a registered agent for service or to any officer, director or agent in charge of any office of such person;

(B) mailing the subpoena and fees by registered or certified mail to such representative at his last known address; or

(C) any method whereby actual notice is given to such representative and the fees are made available before the return date.

(f) Witnesses:

(1) summoned by the secretary shall be paid the same fees and mileage that are paid to witnesses in civil cases in the courts of Indiana; and

(2) whose depositions are taken and the persons taking the depositions are entitled to the same fees as are paid for similar services in the courts of Indiana.

Witness fees and mileage shall be paid by the party at whose insistence the witnesses appear.

(g) In any proceeding official notice may be taken of:

(1) a material fact which might be judicially noticed by a court in Indiana;

(2) a matter in the public official records of the secretary; or

(3) a matter which is peculiarly within the knowledge of the secretary.

If official notice is requested or taken of a material fact not

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1 appearing in the evidence in the record, the parties, upon timely  
2 request, shall be afforded an opportunity to establish the contrary.

3 Sec. 33. To the extent practical, any party to a proceeding is  
4 entitled to use the discovery provisions of Indiana Trial Rule 26  
5 through 37 upon written application to the secretary.

6 Sec. 34. (a) A party may move for summary judgment in the  
7 party's favor as to all or any part of the issues in a proceeding at  
8 any time within fifteen (15) days after the commencement of an  
9 action. The motion:

10 (1) may be supported with affidavits or other evidence  
11 permitted under this section; and

12 (2) must set forth specific facts showing that there is not a  
13 genuine issue of fact in dispute.

14 (b) The motion referenced in subsection (a) and any supporting  
15 affidavits shall be served in accordance with the Indiana Rules of  
16 Trial Procedure. An adverse party shall have thirty (30) days after  
17 service of the motion to serve a response, opposing affidavits, or  
18 other evidence. The secretary shall conduct a hearing on the  
19 motion that shall be held not less than ten (10) days after the time  
20 for filing the response. The secretary may direct the parties to give  
21 oral argument on the motion. The judgment sought shall be  
22 rendered forthwith if the pleadings, depositions, answers to  
23 interrogatories, and admissions on file, together with the affidavits,  
24 testimony, or any other documents show that:

25 (1) a genuine issue as to any material fact does not exist; and

26 (2) the moving party is entitled to a judgment as a matter of  
27 law.

28 A summary judgment may be rendered upon fewer than all the  
29 issues or claims, such as the issue of penalties alone, although a  
30 genuine issue exists as to a violation of law or liability. A summary  
31 judgment upon fewer than all the issues involved in a proceeding  
32 or with respect to fewer than all the claims or parties is not a final  
33 order. The secretary shall designate the issues or claims upon  
34 which the secretary finds no genuine issue as to any material facts.  
35 Summary judgment may not be granted as a matter of course  
36 because the opposing party fails to offer opposing affidavits or  
37 other evidence, but the secretary shall make a determination from  
38 the affidavits and testimony offered upon the matters placed in  
39 issue by the pleadings or the evidence. If it appears from the  
40 affidavits or other evidence, of a party opposing the motion, that  
41 the party cannot for reasons stated present by affidavit or other  
42 evidence facts essential to justify the party's opposition, the

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1 secretary shall make any order that is just.

2 (c) If, on a motion filed in accordance with this section, no order  
3 is rendered upon the whole case or for all the relief asked and a  
4 hearing is necessary, the secretary at the hearing on the motion, by  
5 examining the pleadings or the evidence before the secretary and  
6 by interrogating counsel, shall, if practicable, ascertain what  
7 material facts:

- 8 (1) exist without substantial controversy; and  
9 (2) are actually and in good faith controverted.

10 The secretary shall then issue an order specifying the facts that  
11 appear without substantial controversy, including the extent to  
12 which the amount of damages or other relief is not in controversy,  
13 and directing further proceedings in the action as are just. Upon  
14 the hearing of the action, the facts specified are established, and the  
15 hearing shall be conducted accordingly.

16 (d) Supporting and opposing affidavits must:

- 17 (1) be made on personal knowledge;  
18 (2) set forth facts that are admissible in evidence; and  
19 (3) show affirmatively that the affiant is competent to testify  
20 to the matters stated therein.

21 (e) The secretary may permit affidavits to be supplemented or  
22 opposed by:

- 23 (1) depositions;  
24 (2) answers to interrogatories;  
25 (3) further affidavits;  
26 (4) testimony of witnesses; or  
27 (5) other documents.

28 (f) If a motion for summary judgment is made and supported in  
29 accordance with this section, an adverse party may not rely upon  
30 the mere allegations or denials made in the adverse party's  
31 pleadings as a response to the motion. The adverse party shall:

- 32 (1) respond to the motion with affidavits or other evidence  
33 permitted under this section; and  
34 (2) set forth specific facts showing that there is a genuine issue  
35 in dispute.

36 If the adverse party does not respond as required by this  
37 subsection, the secretary may enter summary judgment against the  
38 adverse party.

39 Sec. 35. Transcripts, if any, of investigative proceedings shall be  
40 recorded solely by the official reporter or by another person or  
41 means designated by the officer conducting the investigation. There  
42 must be one (1) official transcript of the testimony of a witness,

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1 which is the property of the division. Another contemporaneous,  
 2 verbatim transcription by writing or recording, in any form and in  
 3 any media, is prohibited.

4 Sec. 36. A witness and counsel for the witness, upon proper  
 5 identification and after giving reasonable prior notice, have the  
 6 right to inspect the official transcript of the testimony of the  
 7 witness at the office of the division during normal business hours.  
 8 Neither the witness, nor counsel for the witness, has the right to:

9 (1) remove;

10 (2) copy by any manner; or

11 (3) order a copy of the official transcript without  
 12 authorization by the director.

13 Sec. 37. Unless permitted in the discretion of the division  
 14 employee or other person designated by the division conducting an  
 15 investigation or proceeding, no witness shall be present during the  
 16 examination of another witness called in such proceeding. If  
 17 counsel represents more than one (1) witness as set forth in this  
 18 section, counsel shall not inform a witness of the nature and  
 19 contents of the examination of another witness.

20 Sec. 38. A counsel may advise a witness before, during, and after  
 21 the conclusion of testimony given in the course of an investigative  
 22 proceeding and may make summary notes during such testimony  
 23 solely for use in the representation of the witness. The witness is  
 24 responsible for having counsel present at the time and place  
 25 designated by the officer conducting the investigation. If no timely  
 26 prior request for adjournment was made, or if such a request was  
 27 denied for good cause, neither the substitution of counsel nor the  
 28 failure of counsel to appear at the designated time and place for the  
 29 testimony of the witness constitutes an acceptable ground for the  
 30 failure of the witness to:

31 (1) appear at the designated time and place; or

32 (2) answer the questions of the officer conducting the  
 33 examination.

34 Sec. 39. A witness may be accompanied, represented, and  
 35 advised by counsel, as defined in this chapter. In order to protect  
 36 the integrity of any investigation, the secretary may, in the  
 37 reasonable exercise of the discretion of the secretary, prohibit  
 38 multiple representation by counsel and may prohibit  
 39 representation by counsel who is likely to become a witness during:

40 (1) the course of either the investigation; or

41 (2) a legal proceeding expected to ensue upon the conclusion  
 42 of the investigation.

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1       **Sec. 40. (a) An appeal may be taken by:**

2           (1) a dealer or dealer sales agent whose application for license  
3           or registration may have been granted or denied from any  
4           final order of the secretary respecting that application or  
5           registration;

6           (2) an applicant for a license or registration as a dealer or  
7           dealer sales agent from a final order of the secretary affecting  
8           the application or registration as a dealer or dealer sales  
9           agent;

10          (3) a person against whom a civil penalty has been imposed  
11          under this chapter, from the final order of the secretary  
12          imposing the civil penalty; or

13          (4) a person who is named a respondent from any final order  
14          issued by the secretary under this chapter;

15       to the circuit or superior courts of Marion County or the county  
16       where the person taking the appeal resides or maintains a place of  
17       business.

18       **(b) Not later than twenty (20) days after the entry of the order,**  
19       **the secretary shall be served with:**

20           (1) a written notice of the appeal stating the court to which the  
21           appeal will be taken and the grounds upon which a reversal of  
22           the final order is sought;

23           (2) a demand in writing for a certified transcript of the record  
24           and of all papers on file in the office of the secretary affecting  
25           or relating to the order; and

26           (3) a bond in the penal sum of five hundred dollars (\$500) to  
27           the state of Indiana with sufficient surety to be approved by  
28           the secretary, conditioned upon the faithful prosecution of the  
29           appeal to final judgment and the payment of all costs that are  
30           adjudged against the appellant.

31       **(c) After the secretary has been served with the items specified**  
32       **in subsection (b), the secretary shall not later than ten (10) days**  
33       **after services of the items, make, certify, and deliver to the**  
34       **appellant the transcript, and the appellant shall not later than five**  
35       **(5) days after delivery file the transcript and a copy of the notice of**  
36       **appeal with the clerk of the court in which the appeal was filed.**  
37       **The notice of appeal stands as the appellant's complaint, and the**  
38       **secretary may:**

39           (1) appear;

40           (2) file any motion or pleading; and

41           (3) set forth the issue.

42       **The cause shall be entered on the trial calendar for trial de novo**

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and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent evidence, whether oral or documentary, concerning the order of the secretary from which the appeal is taken. If the order of the secretary is reversed, the court shall in its mandate specifically direct the secretary as to the further action of the secretary in the matter, including the:

(1) making and entering of an order or orders in connection therewith; and

(2) conditions, limitations, or restrictions to be contained.

The secretary is not barred from revoking or altering the order for a proper cause that may afterwards accrue or be discovered. If the order is affirmed, the appellant is not barred after thirty (30) days from filing a new application if the application is not otherwise barred or limited. The appeal may not in any way suspend the operation of the order appealed from during the pendency of the appeal unless upon proper order of the court. An appeal may be taken from the judgment of the court on any appeal on the same terms and conditions as an appeal taken in civil actions.

Sec. 41. All records of the division shall be available for public inspection at the office of the division during reasonable hours, except the following which may not be made public:

(1) Records relating to the complaints made to the division and records relating to investigations of the division.

(2) Information or documents obtained by the officers or employees of the division in the course of an audit or investigation, unless made a matter of public record, deemed confidential.

Officers and employees of the division shall not make confidential information or documents available to anyone other than a member, officer, or employee of the secretary's office, the division, or any other regulatory or law enforcement agency, unless the secretary or director authorized the disclosure of such information or the production of such documents as not being contrary to public interest.

Sec. 42. (a) The secretary shall maintain, or designate a person to maintain, a register of dealer licenses and dealer sales agents, orders issued under this chapter, and interpretative opinions or no-action determinations issued under this chapter.

(b) The secretary shall make all:

(1) rules;

(2) forms;

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1 (3) interpretative opinions; and  
 2 (4) orders;  
 3 available to the public.

4 (c) The secretary shall furnish a copy of a record that is a public  
 5 record, or a certification that the public record does not exist, to a  
 6 person that requests the record. A rule adopted under this article  
 7 may establish a reasonable charge for furnishing the record or  
 8 certification. A copy of the record certified or a certificate by the  
 9 secretary of the nonexistence of a record is prima facie evidence of  
 10 a record or its nonexistence.

11 Sec. 43. (a) Except as otherwise provided in subsection (b),  
 12 records obtained or filed by the secretary under this article,  
 13 including a record contained in or filed with an application, are  
 14 available for inspecting and copying.

15 (b) The following records are confidential and are not available  
 16 for inspecting and copying under subsection (a):

17 (1) A record obtained by the secretary in connection with an  
 18 audit or inspection under section 7(c) of this chapter or an  
 19 investigation under section 41(2) of this chapter.

20 (2) A part of a record filed in connection with an application  
 21 that contains trade secrets or confidential information if the  
 22 person filing the registration statement or report has asserted  
 23 a claim of confidentiality or privilege that is authorized by law  
 24 and approved by the secretary.

25 (3) A record that is not required to be provided to the  
 26 secretary or filed under this article and is provided to the  
 27 secretary only on the condition that the record will not be  
 28 subject to public examination or disclosure.

29 (4) A:

30 (A) Social Security number;

31 (B) residential address unless used as a business address;  
 32 and

33 (C) residential telephone number unless used as a business  
 34 telephone number;

35 contained in a record that is filed.

36 (5) A record obtained by the secretary through a designee of  
 37 the secretary that a rule or order under this article has been:

38 (A) expunged from the records of the secretary by a  
 39 designee; or

40 (B) determined to be confidential by the designee if the  
 41 secretary finds the determination to be based on statutory  
 42 authority.

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(c) If the disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 9 of this chapter, the secretary of state may disclose a record obtained in connection with an audit or inspection under section 7 of this chapter or a record obtained in connection with an investigation under section 2(c)(5) of this chapter.

Sec. 44. (a) If the secretary believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article or that a person has, is, or is about to engaged in an act, practice, or course of business that materially aids a violation of this article or a rule adopted or order issued under this article, the director may maintain an action in the circuit or superior court in the county where the investigation or inquiry in question is being conducted to enjoin the act, practice, or course of business and to enforce compliance with this article or a rule adopted or order issued under this article.

(b) In an action under this section and on a proper showing, a court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator;

(B) ordering a receiver or conservator appointed under clause (A) to:

(i) take charge and control of the property of the respondent, including investment accounts and accounts in a depository institution, rents, and profits;

(ii) collect debts; and

(iii) acquire and dispose of property;

(C) imposing a civil penalty up to ten thousand dollars (\$10,000) per violation and an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article; and

(D) ordering the payment of prejudgment and post judgment interest; or

(3) order such other relief as the court considers appropriate.

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1 (c) The director may not be required to post a bond in an action  
2 or proceeding under this article.

3 (d) Penalties collected under this section shall be deposited in  
4 the dealer enforcement account referenced in IC 9-32-6-2.

5 Sec. 45. (a) The secretary may:

6 (1) conduct public or private investigations within or outside  
7 Indiana that the secretary considers necessary or appropriate  
8 to determine whether a person has violated, is violating, or is  
9 about to violate this article or a rule adopted or order issued  
10 under this article, or aid in the enforcement of this article or  
11 in the adoption of rules and forms under this article;

12 (2) require or permit a person to testify, file a statement, or  
13 produce a record, under oath or otherwise as the secretary  
14 determines, as to all the facts and circumstances concerning  
15 a matter to be investigated or about which an action or  
16 proceeding is to be instituted; and

17 (3) publish a record concerning an action, proceeding, or  
18 investigation under, or a violation of, this article or a rule  
19 adopted or order issued under this article if the secretary  
20 determines it is necessary or appropriate and in the public  
21 interest and for the protection of dealers or consumers.

22 (b) For the purpose of an investigation under this article, the  
23 secretary or a designated employee of the secretary may  
24 administer oaths and affirmations, subpoena witnesses, seek  
25 compulsion of attendance, take attendance, take evidence, require  
26 the filing of statements, and require the production of any records  
27 that the secretary considers relevant or material to the  
28 investigation. Upon order of the secretary or a hearing officer  
29 appointed by the secretary in a hearing, depositions may be taken  
30 in the manner prescribed by law for depositions in civil actions and  
31 made returnable to the secretary or a hearing officer appointed by  
32 the secretary.

33 (c) If a person does not appear or refuses to testify, file a  
34 statement, or produce records, or otherwise does not obey a  
35 subpoena as required by this article, the secretary or hearing  
36 officer appointed by the secretary may apply to the circuit or  
37 superior court in the county where the hearing, investigation, or  
38 inquiry in question is being conducted to enforce compliance. The  
39 court may:

40 (1) hold the person in contempt;

41 (2) order the person to appear before the secretary or hearing  
42 officer appointed by the secretary;

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(3) order the person to testify about the matter under investigation or in question;

(4) order the production of records;

(5) grant injunctive relief, including restricting or prohibiting the offer or sale of vehicles;

(6) impose a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation; and

(7) grant any other necessary or appropriate relief.

(d) This section does not preclude a person from applying to the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) If a witness, in any hearing, inquiry or investigation conducted under this article, refuses to answer any question or produce any item, the secretary may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the secretary may make a written request that the court grant use immunity to the witness. Upon written request of the secretary, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the items requested.

A grant of use immunity does not prohibit the use of evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(f) In any prosecution, action, suit, or proceeding based upon or arising out of or under this article, a certificate duly signed by the secretary showing compliance or noncompliance with this article by the dealer constitutes prima facie evidence of compliance with

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1 this article, and is admissible in evidence in any action at law or in  
2 equity to enforce this article.

3 (g) Each witness who shall appear before the secretary or a  
4 hearing officer appointed by the secretary by order is entitled to  
5 receive for the witness's attendance the fees and mileage provided  
6 for witnesses in civil cases, which shall be audited and paid by the  
7 state in the same manner as other expenses of the division are  
8 audited and paid upon the presentation of proper vouchers sworn  
9 to by the witnesses and approved by the secretary. However, a  
10 witness subpoenaed at the instance of parties other than the  
11 secretary or a hearing officer appointed by the secretary is not  
12 entitled to any fee or compensation from the state.

13 Sec. 46. (a) If the secretary determines that a person has  
14 engaged, is engaging or is about to engage in an act, practice, or  
15 course of business constituting a violation of this article or a rule  
16 adopted or order issued under this article or that a person has  
17 materially aided, is materially aiding or is about to materially aid  
18 an act, practice, or course of business constituting a violation of  
19 this article or a rule adopted or order issued under this article, the  
20 secretary may:

21 (1) investigate and may issue, with or without a prior hearing,  
22 orders and notices as the secretary determines to be in the  
23 public interest, including cease and desist orders, orders to  
24 show cause, and notices. After notice and hearing, the  
25 secretary may enter an order of rescission, restitution or  
26 disgorgement, including interest at the legal rate of interest,  
27 directed to a person who has violated this article or a rule or  
28 order under this article;

29 (2) issue an order denying, suspending, or revoking a dealer  
30 license;

31 (3) issue an order denying, suspending, or revoking the  
32 registration of a dealer sales agent;

33 (4) issue an order permanently barring a person from  
34 obtaining a dealer license or becoming registered as a dealer  
35 sales agent; or

36 (5) issue an order denying or suspending the use of dealer  
37 plates or the issuance of interim plates.

38 (b) An order under subsection (a) is effective upon the date of  
39 issuance. Upon issuance of the order, the secretary shall promptly  
40 serve each person subject to the order with a copy of the order and  
41 a notice that the order has been entered. The order must include:

42 (1) a statement whether the secretary will seek a civil penalty

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- or costs of the investigation;
- (2) a statement of the reasons for the order; and
- (3) notice that, not later than fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing.

If a person subject to the order does not request a hearing and none is ordered by the secretary not later than forty-five (45) days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the secretary, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered under subsection (b), the hearing must be held not later than fifteen (15) business days after receipt if the original order issued by the secretary was a summary suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after receipt for all other orders. A final order may not be issued unless the secretary makes findings of fact and conclusions of law in a record. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the secretary may impose a civil penalty of up to ten thousand dollars (\$10,000) per violation. Penalties collected under this section shall be deposited in the dealer enforcement account established at IC 9-32-6-2.

(e) In a final order, the secretary may charge the cost of an investigation or proceeding for a violation of this article or a rule adopted or order issued under this article.

(f) In a final order, the secretary may order the dealer to surrender all dealer license plates and all unissued interim plates.

(g) If a petition for judicial review of a final order is not filed in accordance with section 40 of this chapter, the secretary may file a certified copy of the final order with the clerk of court with jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(h) If a person does not comply with an order under this section, the secretary may petition a court with jurisdiction to enforce the order. The court may not require the secretary to post a bond in an action or proceeding under this section. If the court finds, after

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1 service of process and opportunity for hearing, that the person was  
 2 not in compliance with the order, the court may adjudge the person  
 3 in civil contempt of the order. The court may impose a further civil  
 4 penalty against the person for contempt in an amount not greater  
 5 than twenty thousand dollars (\$20,000) for each violation and may  
 6 grant any other relief the court determines is just and proper in the  
 7 circumstances.

8 (i) If the secretary conducts a hearing under this section, the  
 9 secretary may depose any witness.

10 (j) In addition to all other remedies, the secretary may seek the  
 11 following remedies against a person who violates, attempts to  
 12 violate, or assists in a violation of or an attempt to violate this  
 13 chapter:

14 (1) an injunction.

15 (2) appointment of a receiver or conservator.

16 (3) a civil penalty of up to ten thousand dollars (\$10,000) per  
 17 violation.

18 (4) an action to enforce a civil penalty assessed under  
 19 subdivision (3).

20 (k) In a court proceeding initiated under this section in which  
 21 judgment is awarded to the secretary, the secretary is entitled to  
 22 recover the costs and expenses of the investigation. The court shall  
 23 include the costs in the final judgment of the court.

#### 24 Chapter 17. Penalties

25 Sec. 1. Except as provided in section 9 of this chapter, a person  
 26 who violates this article, a rule established under this article, or an  
 27 order issued by the secretary is subject to a civil penalty of up to  
 28 ten thousand dollars (\$10,000) for each act of violation. Civil  
 29 penalties recovered under this section shall be paid to the state and  
 30 deposited into the dealer enforcement account established under  
 31 IC 9-32-6-2.

32 Sec. 2. (a) Except as provided in subsections (b) and (c), a person  
 33 who violates IC 9-32-3 commits a Class C infraction.

34 (b) A person who knowingly or intentionally violates  
 35 IC 9-32-3-2(a)(1), IC 9-32-3-2(a)(2), IC 9-32-3-2(a)(4),  
 36 IC 9-32-3-2(a)(5), or IC 9-32-3-2(d) commits a Class B  
 37 misdemeanor.

38 (c) A person who knowingly or intentionally violates  
 39 IC 9-32-3-2(a)(3) commits a:

40 (1) Class A misdemeanor for the first violation; and

41 (2) Class D felony for the second or subsequent unrelated  
 42 violation.

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1       **Sec. 3. (a) Except as provided in subsection (b), a person who**  
 2       **knowingly or intentionally violates IC 9-32-5 commits a Class A**  
 3       **misdemeanor.**

4       **(b) A person who knowingly or intentionally violates**  
 5       **IC 9-32-5-13 commits a Class C misdemeanor.**

6       **Sec. 4. (a) Except as provided in subsections (b) and (c), a person**  
 7       **who knowingly or intentionally violates IC 9-32-8 commits a Class**  
 8       **B misdemeanor.**

9       **(b) A person who knowingly or intentionally violates**  
 10       **IC 9-32-8-27 commits a Class D felony.**

11       **(c) In addition to any applicable criminal penalty, a person who**  
 12       **violates IC 9-32-8 commits a deceptive act that is actionable by the**  
 13       **attorney general and is subject to the remedies and penalties under**  
 14       **IC 24-5-0.5.**

15       **Sec. 5. A person who knowingly or intentionally violates**  
 16       **IC 9-32-9 commits a Class B misdemeanor.**

17       **Sec. 6. (a) A person who knowingly or intentionally violates:**

18               **(1) IC 9-32-11-1; or**

19               **(2) IC 9-32-11-13;**

20       **commits a Class A misdemeanor.**

21       **(b) A person who knowingly or intentionally violates**  
 22       **IC 9-32-11-18 commits a Class C misdemeanor.**

23       **Sec. 7. (a) Except as provided in subsection (b), a person who**  
 24       **knowingly or intentionally violates IC 9-32-13 commits a Class B**  
 25       **misdemeanor.**

26       **(b) A person who knowingly or intentionally violates:**

27               **(1) IC 9-32-13-25; or**

28               **(2) IC 9-32-13-26;**

29       **commits a Class A misdemeanor.**

30       **Sec. 8. A person who knowingly or intentionally violates**  
 31       **IC 9-32-16-14 commits a Class D felony.**

32       **Sec. 9. A dealer who fails to deliver a certificate of origin or title**  
 33       **under IC 9-32-4-1 or IC 9-32-4-8 or fails to deliver timely a**  
 34       **certificate of title under IC 9-32-3-2(c) is subject to the following**  
 35       **civil penalties:**

36               **(1) One hundred dollars (\$100) for the first violation.**

37               **(2) Two hundred and fifty dollars (\$250) for the second**  
 38               **violation.**

39               **(3) Five hundred dollars (\$500) for all subsequent violations.**

40       **Payment shall be made to the secretary and deposited in the dealer**  
 41       **enforcement account established under IC 9-32-6-2.**

42       **Sec. 10. A retail lessor who fails to comply with IC 9-32-12, as**

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1 set forth in IC 9-32-12-4, is liable to the retail lessee for:

- 2 (1) actual damages sustained;
- 3 (2) a civil penalty of not more than one thousand dollars
- 4 (\$1,000) per lease transaction; and
- 5 (3) reasonable attorney's fees and costs.

6 Sec. 11. As set forth in IC 9-32-16-46(k), in addition to all other  
7 remedies, the secretary may seek the following remedies against a  
8 person that violates, attempts to violate or assists in a violation of  
9 or an attempt to violate IC 9-32-16:

- 10 (1) An injunction.
- 11 (2) Appointment of a receiver or conservator.
- 12 (3) A civil penalty not to exceed ten thousand dollars (\$10,000)
- 13 per violation.
- 14 (4) An action to enforce a civil penalty assessed under
- 15 subdivision (3).

16 Civil penalties recovered under this section shall be paid to the  
17 state and deposited into the dealer enforcement account established  
18 under IC 9-32-6-2.

19 SECTION 54. IC 23-19-6-1, AS AMENDED BY P.L.114-2010,  
20 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
21 JULY 1, 2011]: Sec. 1. (a) This article shall be administered by a  
22 division of the office of the secretary of state. The secretary of state  
23 shall appoint a securities commissioner who shall be responsible for  
24 the direction and supervision of the division and the administration of  
25 this article under the direction and control of the secretary of state. The  
26 salary of the securities commissioner shall be paid out of the funds  
27 appropriated for the administration of this article. The commissioner  
28 shall serve at the will of the secretary of state.

29 (b) The secretary of state:

- 30 (1) shall employ a chief deputy, attorneys, a senior investigator,
- 31 a senior accountant, and other deputies, investigators,
- 32 accountants, clerks, stenographers, and other employees necessary
- 33 for the administration of this article; and
- 34 (2) shall fix their compensation with the approval of the budget
- 35 agency.

36 (c) It is unlawful for the commissioner or an officer, employee, or  
37 designee of the commissioner to use for personal benefit or the benefit  
38 of others records or other information obtained by or filed with the  
39 commissioner that are not public under section 7(b) of this chapter.  
40 This article does not authorize the commissioner or an officer,  
41 employee, or designee of the commissioner to disclose the record or  
42 information, except in accordance with section 2, 7(c), or 8 of this

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chapter.

(d) This article does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(e) Subject to IC 4-2-6-15, the commissioner may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the commissioner may collaborate with public and nonprofit organizations with an interest in investor education. The commissioner may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the commissioner to require participation or monetary contributions of a registrant in an investor education program.

(f) Fees and funds of whatever character accruing from the administration of this article shall be accounted for by the secretary of state and shall be deposited with the treasurer of state to be deposited by the treasurer of the state in either the state general fund or the enforcement account referenced below. Subject to IC 4-2-6-15, expenses incurred in the administration of this article shall be paid from the state general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However, grants and donations received under subsection (e), costs of investigations recovered under section 4(e) of this chapter, and civil penalties recovered under sections 3(b) and 4(d) of this chapter shall be deposited by the treasurer of state in a separate account to be known as the securities division enforcement account. Notwithstanding ~~IC 9-23-6-4~~, IC 23-2-2.5-34, IC 23-2-2.5-43, IC 23-2-5-7, IC 23-19-4-12, IC 25-11-1-15, and this chapter, five percent (5%) of funds received after June 30, 2010, for deposit in the enforcement account shall instead be deposited in the securities restitution fund established under ~~IC 23-20-1-26~~. **IC 23-20-1-25.** Subject to IC 4-2-6-15, the funds deposited in the enforcement account shall be available, with the approval of the budget agency:

(1) to augment and supplement the funds appropriated for the administration of this article; and

(2) for grants and awards to nonprofit entities for programs and activities that will further investor education and financial literacy in the state.

The funds in the enforcement account do not revert to the state general

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1 fund at the end of any state fiscal year.

2 (g) In connection with the administration and enforcement of this  
3 article, the attorney general shall render all necessary assistance to the  
4 commissioner upon the commissioner's request, and to that end, the  
5 attorney general shall employ legal and other professional services as  
6 are necessary to adequately and fully perform the service under the  
7 direction of the commissioner as the demands of the securities division  
8 shall require. Expenses incurred by the attorney general for the  
9 purposes stated in this subsection shall be chargeable against and paid  
10 out of funds appropriated to the attorney general for the administration  
11 of the attorney general's office. The attorney general may authorize the  
12 commissioner and the commissioner's designee to represent the  
13 commissioner and the securities division in any proceeding involving  
14 enforcement or defense of this article.

15 (h) Neither the secretary of state, the commissioner, nor an  
16 employee of the securities division shall be liable in their individual  
17 capacity, except to the state, for an act done or omitted in connection  
18 with the performance of their respective duties under this article.

19 (i) The commissioner shall take, prescribe, and file the oath of office  
20 prescribed by law. The commissioner, chief deputy commissioner, and  
21 each attorney or investigator designated by the commissioner are police  
22 officers of the state and shall have all the powers and duties of police  
23 officers in making arrests for violations of this article, or in serving any  
24 process, notice, or order connected with the enforcement of this article  
25 by whatever officer, authority, or court issued and shall comprise the  
26 enforcement department of the division and are considered a criminal  
27 justice agency for purposes of IC 5-2-4 and IC 10-13-3.

28 (j) The provisions of this article delegating and granting power to  
29 the secretary of state, the securities division, and the commissioner  
30 shall be liberally construed to the end that:

- 31 (1) the practice or commission of fraud may be prohibited and
- 32 prevented;
- 33 (2) disclosure of sufficient and reliable information in order to
- 34 afford reasonable opportunity for the exercise of independent
- 35 judgment of the persons involved may be assured; and
- 36 (3) the qualifications may be prescribed to assure availability of
- 37 reliable broker-dealers, investment advisers, and agents engaged
- 38 in and in connection with the issuance, barter, sale, purchase,
- 39 transfer, or disposition of securities in this state.

40 It is the intent and purpose of this article to delegate and grant to and  
41 vest in the secretary of state, the securities division, and the  
42 commissioner full and complete power to carry into effect and

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1 accomplish the purpose of this article and to charge them with full and  
2 complete responsibility for its effective administration.

3 (k) Copies of any statement and documents filed in the office of the  
4 secretary of state and of any records of the secretary of state certified  
5 by the commissioner shall be admissible in any prosecution, action,  
6 suit, or proceeding based upon, arising out of, or under this article to  
7 the same effect as the original of such statement, document, or record  
8 would be if actually produced.

9 (l) IC 4-21.5 is not applicable to any of the proceedings under this  
10 article.

11 SECTION 55. IC 24-4-6-1, AS AMENDED BY P.L.156-2006,  
12 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2011]: Sec. 1. (a) This section does not apply to a person that  
14 holds a special event permit issued under ~~IC 9-23-2-16~~. **IC 9-32-11-17.**

15 (b) A person who engages in the business of buying, selling, or  
16 trading motor vehicles on Sunday commits a Class B misdemeanor.

17 SECTION 56. IC 34-30-2-30 IS AMENDED TO READ AS  
18 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 30. ~~IC 9-22-3-25~~  
19 **IC 9-32-8-24** (Concerning persons releasing or providing evidence or  
20 information concerning ~~auto theft~~; **salvage vehicles**).

21 SECTION 57. THE FOLLOWING ARE REPEALED [EFFECTIVE  
22 JULY 1, 2011]: IC 9-17-2-12; IC 9-17-3-3; IC 9-17-3-3.1; IC 9-17-8;  
23 IC 9-18-26; IC 9-22-3; IC 9-22-4; IC 9-23-0.7; IC 9-23-1; IC 9-23-2;  
24 IC 9-23-2.5; IC 9-23-3; IC 9-23-4; IC 9-23-5; IC 9-23-6; IC 9-29-5-14;  
25 IC 9-29-5-14.5; IC 9-29-5-15; IC 9-29-5-39; IC 9-29-5-43; IC 9-29-7-2;  
26 IC 9-29-7-2.3; IC 9-29-7-2.5; IC 9-29-7-3; IC 9-29-7-4; IC 9-29-7-5;  
27 IC 9-29-7-6; IC 9-29-7-7; IC 9-29-8; IC 9-29-15-7; IC 9-31-4.

28 SECTION 58. [EFFECTIVE JULY 1, 2011] (a) **The legislative**  
29 **services agency shall prepare legislation for introduction in the**  
30 **2012 regular session of the general assembly to organize and**  
31 **correct statutes affected by this act, if necessary.**

32 (b) **This SECTION expires December 31, 2012.**

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